

473/89

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IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

PHOTOCIRCUIT S A (PTY) LIMITED Appellant

and

ADV P E ROUX SC N O 1st Respondent

C E DOUGLASS 2nd Respondent

CORAM : HOEXTER, VIVIER, MILNE, KUMLEBEN JJA
et KRIEGLER AJA

HEARD : 12 MARCH 1991

DELIVERED : 12 MARCH 1991

TRANSCRIPT OF EXTEMPORE JUDGMENT DELIVERED
IN COURT ON 12 MARCH 1991

HOEXTER JA/...

HOEXTER JA:

The appeal is dismissed with costs. Certain unsatisfactory and disquieting features call for comment.

On 30 November 1990 this court delivered judgment in the matter of Photocircuit SA (Pty) Ltd v P P de Klerk NO and Others (the "De Klerk appeal"). The present appellant was also the appellant in that case. One of the issues calling for decision in the De Klerk appeal was whether in terms of s 23(1) of the Labour Relations Act, No 28 of 1956, the Industrial Council had jurisdiction over the appellant. After hearing full argument and considering the relevant authorities, this court decided the question against the appellant for reasons comprehensively set out in the written judgment. The issue decided in the De

Klerk appeal was, and is, the only one raised in the present appeal. On the face of it, the earlier decision disposes of the one issue in the present appeal.

The original heads of argument filed on behalf of the appellant in this appeal were lodged before delivery of the De Klerk judgment. This morning, however, supplementary heads of argument were submitted by Mr van Graan, who now appears on behalf of the appellant. One reads them with astonishment. There is no reference to the De 'Klerk judgment: one phrase obliquely suggests that counsel was aware of the earlier judgment when he drafted the supplementary heads. (During argument Mr van Graan conceded this.) The single authority referred to is a text-book on Administrative Law. Moreover, there is simply nothing in them to indicate that counsel was aware of the stare

decisis rule as it is to be applied to a decision of the Appellate Division which is sought to be reversed. Last but not least, the submissions in these heads do not attempt any critical analysis of the reasoning in the De Klerk judgment. In the main the argument now advanced is no more than a variation of the theme which was put forward and rejected in that judgment, and the submissions as today presented to us are in our judgment without substance.

This lamentable chronicle of events prompted Mr Duminy, who appeared for the second respondent, to ask that the costs of this hearing be awarded against the appellant on an attorney and client scale. If one were certain that the objectionable aspects of this appeal could be attributed to anything more than ineptitude this request would have merited serious

consideration.

G. G. Hoexter

G G HOEXTER JA

VIVIER	JA)	
MILNE	JA)	Concurred
KUMLEBEN	JA)	
KRIEGLER	AJA)	