



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 59086/2021

HEARD ON: 23/11/2023

JUDGMENT: 12/12/2023

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

DATE 12.12.2023

SIGNATURE

IN THE MATTER BETWEEN:

**ELSYS (PTY) LTD T/A
ELECTROSYSTEMS**

APPLICANT

AND

**BTS ELECTRICAL AND
MECHANICAL SERVICES
(PTY) LTD (IN LIQUIDATION)**

FIRST RESPONDENT

TERRY MAHON, N.O.

SECOND RESPONDENT

JUDGMENT (LEAVE TO APPEAL)

Strijdom AJ

1. This is an application for leave to appeal the whole of my judgment handed down on the 5th of June 2023.

2. Leave is sought to the Full Court of the Gauteng Local Division of the High Court, Johannesburg, alternatively, the Supreme Court of Appeal.

3. The applicants' grounds of appeal are summarily set out hereunder.¹

3.1 Another court might reasonably find that the arbitrator exceeded the powers by deciding issues that had not been pleaded or fell outside the confines of the pleaded case of the first respondent;

3.2 The learned judge erred in finding that the arbitrator did not commit a gross irregularity in the conduct of the proceedings, specifically in that the arbitrator treated the parties differently;

3.3 The arbitrator treated ELSYS application to lead further limited evidence as an application for late discovery which he refused, which in turn led to

¹ Case lines: 14-2 to 14-4

the parties being treated differently and unfairly in the conduct of the arbitration.

4. Section 17 (1)(a) of the Superior Courts' Act 10 of 2013 provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or if there is some compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.
5. Each application for leave to appeal must be decided on its own facts. Some examples of what will be regarded as compelling reasons have been identified, they include:
 - (a) The substantial importance of the case to the applicant or to both the applicant and respondent;
 - (b) The decision sought to be appealed against involves an important question of law;
 - (c) Administration of justice either generally or in the particular case concerned requires the appeal to be heard and
 - (d) An issue of public importance which will have an effect on future matters.

6. The Superior Courts' Act has raised the bar for granting leave to appeal. In **MONT CHEVAUX TRUST V TINA GOOSEN AND 18 OTHERS**,² the court held as follows;

"It is clear that the threshold for granting leave to appeal against a judgement of a High Court has been raised in the new act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see **VAN HEERDEN V GRONWRIGHT AND OTHERS** 1985 (2) SA 342 (T) at 343 H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgement is sought to be appealed against.

7. In respect of all the grounds of appeal raised by the applicant, my judgment deals with the facts and the law as presented by the parties and how the court arrived at each conclusion on the contentions raised by the parties.
8. When the facts and the law were examined, there is in my view no sound or rational basis for the conclusion that the appeal would have a reasonable prospect of success.
9. I am further of the view that there are no compelling reasons why the appeal should be heard.
10. In the result, the application for leave to appeal is dismissed with costs.

² 2014 JDR 2325 (LCC)



STRIJDOM J J
ACTING JUDGE OF THE
HIGH COURT OF SOUTH
AFRICA GAUTENG
LOCAL DIVISION
JOHANNESBURG

Appearances:

For the applicant: Adv P. Strathern SC

Instructed by: Hewlett Bunn Incorporated

For the first respondent: Adv AJ Daniels SC
And Adv De Villiers Golding

Instructed by: Cox Yeats Attorneys