



## THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

**Transnet National Ports Authority v Reit Investments (Pty) Limited and Another (Case no 1159/2019) [2020] ZASCA 129 (13 October 2020)**

**From:** The Registrar, Supreme Court of Appeal  
**Date:** 13 October 2020  
**Status:** Immediate

***Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.***

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Today the Supreme Court of Appeal (SCA) handed down its judgment in terms of which it upheld the appeal by the appellant with costs including the costs of two counsel and set aside the order of the court a quo.

The appellant in this case is Transnet National Ports Authority (Transnet) which is a public company incorporated in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 as read/ with the Companies Act 71 of 2008. The first respondent is Reit Investments (Pty) Ltd (Reit) which is a private company incorporated in South Africa. The second respondent is Mr Matsobane Charles Seota, (Mr Seota), who was cited in his official capacity as the registrar of the South African Council for the Property Valuers Profession (SACPVP). This appeal raises two interrelated issues, firstly, the correct basis upon which valuations of immovable property, situated in Maydon Wharf in the port of Durban, should be made for purposes of determining rentals payable in respect of those properties. Secondly, whether the agreements concluded between the parties in 2009 and described as 'Declaration of Rental' had the effect of varying the basis upon which rental would be determined for the remaining period of the long-term leases terminating by effluxion of time on 30 September 2029.

Mr Seota took no part in the proceedings in the court below and has not participated in this appeal. Reit's case was that 'instead of determining the market value of the land, to which he had to apply the contractually stipulated fixed percentage to establish the annual rental', Mr Seota 'determined (contrary to the terms of the contract) the market-related rental in respect of the properties'. The parties' dispute was based on five long-term notarial agreements of lease. Reit had initially sought an order reviewing and setting aside Mr Seota's determination coupled with an order directing Transnet to procure, within the period determined by the court, a fresh valuation of the land in accordance with the principles identified in the judgment of the court below. Reit later sought declaratory orders to the effect that Mr Seota was appointed to value the land (excluding improvements thereon) in terms of the agreements of lease but failed to do so. Despite opposition by Transnet, the High Court held that Reit

had made out a case for the relief sought. Accordingly, it granted relief substantially in the terms sought by Reit in its amended notice of motion. This appeal was against that order and came before the SCA with its leave after the High Court had refused leave.

Clause 5 of the various agreements was central to the dispute between the parties. Transnet was empowered in terms of section 67 of the National Port Act 12 of 2005, in circumstances where the terms of a long-term lease concluded were thought to be substantially prejudicial to the operation of a port, to address a letter to the lessee concerned and direct that the applicable terms be renegotiated in order to remove the prejudice. Two letters were sent to this effect and it was stipulated that other than the terms reviewed and agreed to in terms of the declarations of rental, Transnet had no intention of varying the other terms of the leases. Reit's attorneys advised Transnet that Reit had agreed, on a without prejudice basis, to sign the declarations of rental. Transnet's case was that Reit unequivocally accepted that there had been a variation of the various leases whereas Reit contended that the variation related only to the five-year period from 1 June 2009 to 31 May 2014.

Both parties later appointed valuers to determine the rentals for the succeeding five-year period. However they did not reach an agreement on the rentals. Reit confirmed that, pending the resolution of the dispute, it would continue to pay the invoiced amount provided that if they had overpaid Transnet would refund or credit their account. Reit suggested to Transnet that in view of the impasse it would be best to invoke the dispute-resolution mechanism of the notarial leases. The parties agreed to submit the two disparate valuations to the council of the South African Council for the Property Valuers Profession (SACPVP) to be reviewed by an umpire appointed by the council to determine the most appropriate valuation. Transnet's valuation was considered to be fair and reasonable. Reit did not sign the declarations and they later successfully instituted review proceedings in the High Court. Transnet's rental determination and the correctness or otherwise of the high court order is what was before the SCA on appeal. The incorrect rental determination and the correctness or otherwise of that order is what confronted the SCA on appeal. The SCA noted that the High Court mischaracterised the nature of the dispute between the parties.

The SCA did not agree with Reit's contention that the parties would revert to the initial formula provided for in the notarial leases in terms of which the percentage of the value of bare land was what mattered. However, the SCA held that Reit's preferred interpretation was not commercially sensible. The SCA further noted the necessity to consider the argument advanced by Transnet where it contended that the various notarial leases were validly amended to provide for the determination of rental on a market-related basis. The SCA emphasised that to interpret the 2009 declarations of rental in the way for which Reit contended, would not be sensible or businesslike. It would, in addition, not make economic and commercial sense which is how contracts ought to be construed. Accordingly, the Court was satisfied that the appeal must succeed with costs, including the costs occasioned by the employment of two counsel