

CASE NO

A57/2017

DATE

23 APRIL 2019

In the matter between

MV CHITRAL & ANOTHER

APPLICANT

5 and

CONISTON LTD

RESPONDENT

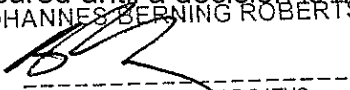
JUDGMENT

(ON APPLICATION FOR LEAVE TO APPEAL)


10 LOPES J This is an application for leave to appeal against the whole of my  
 judgment which was handed down on the 19<sup>th</sup> December 2019 relating to the  
 hearing on the 7<sup>th</sup> December 2018. I have read the notice of application for  
 leave to appeal and listened to the arguments of both Ms Mills for the  
 applicants in the application for leave to appeal, and by Mr Mullins for  
 15 Coniston Ltd the respondent in the application.

I do not intend to deal with all of the matters set forth in the application  
 for leave to appeal suffice to say that the central issue is whether or not a case  
 was established by Coniston Ltd that it remained under-secured in respect of  
 its claim, and was entitled to be paid further security most of which was for the  
 20 award of interest. Whether interest *per se* is applicable, was agreed upon by  
 the experts put up by Coniston Ltd, and ultimately it makes no difference which  
 system of law is referred to in determining the rate of interest to be applied.

On the evidence of either Ms Parry or Mr Zahed, it will suffice to  
 establish the interest sought by Coniston Ltd, and Coniston remains under-  
 25 secured until a decision is made by the arbitration panel in Pakistan.

JOHANNES BERNING ROBERTSON  
  
 -----  
 COMMISSIONER OF OATHS  
 PRACTISING ATTORNEY R.S.A.  
 1ST FLOOR COMPENDIUM HOUSE  
 5 THE CRESCENT  
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In all the circumstances I am of the view that the test set out in s 71 of the Superior Courts Act 2017 is not passed by the applicants, because that section prescribes that leave to appeal may only be given where I am of the opinion that the appeal would have a reasonable prospect of success.

5 I do not believe that it would, and accordingly the application for leave to appeal is DISMISSED WITH COSTS, such costs to include those consequent upon the employment of senior counsel.

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JOHANNES BERNING ROBERTSON  
*JBR*  
-----  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY R.S.A.  
1ST FLOOR COMPENDIUM HOUSE  
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*JBR* *NW*



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This is, to the best abilities of the transcriber, a true and correct transcript of the proceedings, **where audible**, recorded by means of a mechanical recorder in the matter:

### MV CHITRAL & ANOTHER v CONISTON LTD

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CASE NO : A57/17

COURT OF ORIGIN : DURBAN

TRANSCRIBER : *Alanya*

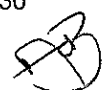
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#### CONTRACTOR

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*MN*



**IN THE KWAZULU NATAL HIGH COURT, DURBAN**  
**REPUBLIC OF SOUTH AFRICA**

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CASE NO : A57/17

DATE : 23 APRIL 2019

In the matter between

**MV CHITRAL & ANOTHER** APPLICANT

and

**CONISTON LTD** RESPONDENT

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**BEFORE THE HONOURABLE MR JUSTICE G LOPES**

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ON BEHALF OF APPLICANT : ADV L MILLS

ON BEHALF OF RESPONDENT : ADV R MULLINS

**REPORT ON RECORDING**  
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