


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA



26/8/16

Date of hearing: 10 August 2016

Case number: 11810/2016

(1)	REPORTABLE: YES <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO
(3)	REVISED.
	<u>22/8/2016</u>
	DATE
	
	SIGNATURE

In the matter between:

PRINCIPLE EDUCATION AND MARKETING CC

First Applicant/Defendant

TOERIEN, TREVOR KEITH

Second Applicant/Defendant

And

NEDBANK LIMITED TRADING AS MFC

Respondent/Plaintiff

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

BRENNER AJ

1. This is an application for leave to appeal against the whole of the order handed down on 21 April 2016, against the first applicant, Principle Education and Marketing CC ("the corporation"), and in respect of which reasons for judgment were handed down on 13 June 2016.
2. The application for leave to appeal could only be brought by the first applicant, being the corporation, this since summary judgment was confined to relief against the first applicant.
3. In the notice of application for leave to appeal, the corporation advances two grounds for leave sought. They are: firstly, that the Court erred in not refusing summary judgment, and secondly, that the matter should have been referred to trial.
4. In argument before Court on 10 August 2016, Mr Trevor Toerien, on behalf of the corporation, elaborated further on the above argument. He argued that summary judgment could only be granted on the basis of a liquid document, and that the respondent, Nedbank Limited ("Nedbank"), did not rely for its cause of action on a liquid document.
5. This argument is baseless. It is axiomatic that Rule 32 of the Uniform Rules of Court plainly sanctions the right of Nedbank to apply for summary judgment on the basis sought by it in casu. I refer in this regard to the provisions of Rule 32(1)(b) and (c), which permit summary judgment for a liquidated amount in money and for delivery of specified movable property. This is the relief which was sought by Nedbank.
6. The corporation took issue with the omission by Nedbank to produce the original of the instalment sale agreement ("the agreement"), and argued that

this was fatal to its case. On 15 December 2011, Nedbank had sold a seven seater Hyundai Sante Fe motor vehicle to the corporation, in terms of the agreement.

7. In argument before Court, however, Mr Toerien did not dispute the authenticity of the signature on the agreement, nor the authority of the signatory, being Mr Toerien himself, qua member of the corporation.
8. I reiterate what was stated by Mr Toerien on behalf of the corporation in the response to the combined summons, namely:

"There is no dispute with any of the facts in the instant matter."

9. This being the case, it was competent for Nedbank to have produced a true copy of the original of the agreement and it was within the discretion of the Court to accept same as such.
10. In argument for Nedbank, my attention was drawn to the case of **Majola v Nitro Securitisation 2012(1) SA 226 SCA**. I quote from paragraph 25 F et sequitur, at page 232:

"The purpose of summary judgment is to "enable a plaintiff with a clear case to obtain swift enforcement of a claim against a defendant who has no real defence to that claim." It is a procedure that is intended "to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights". If a court hearing an application for summary judgment is satisfied that a defendant has no bona fide defence to a plaintiff's claim and grants summary judgment as a consequence, it should be slow thereafter to grant leave to appeal, lest it undermine the very purpose of the procedure."

11. In the premises, I am of the view that the first applicant, being the corporation, does not enjoy a reasonable prospect of success on appeal, this because no bona fide defence was raised to the claims against it, and that leave to appeal should accordingly be refused, with costs following the

result. My grounds for granting summary judgment are more fully adumbrated in my written judgment handed down on 13 June 2016.

12. The grounds for appeal having been without foundation, there is no reason why an exemplary order for costs should not be granted.

13. The following order is granted:

- a. the first applicant's application for leave to appeal against the order dated 21 April 2016 read with the judgment dated 13 June 2016 is dismissed;
- b. the first applicant is directed to pay the costs of the application on a scale as between attorney and client.



T BRENNER
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
22 August 2016

Appearances

For the First Applicant/Defendant:	Mr T K Toerien
Instructed by:	No legal representation
Counsel for Respondent/Plaintiff:	Adv J P van den Berg
Instructed by:	VHI Attorneys