IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 15338/2022

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) NOT REVISED

3 December 2024 [redacted]

DATE SIGNATURE

In the matter between:

TIYANE BARON VUKEYA **APPLICANT**

and

ABSA BANK LIMITED **RESPONDENT**

In re:

ABSA BANK LIMITED **PLAINTIFF**

and

TIYANE BARON VUKEYA **DEFENDANT**

This judgment is made an order of court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and is submitted electronically to the parties/their legal representatives by email. This judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her secretary. The date of this order is deemed to be 3 December 2024.

JUDGMENT

VAN DER MERWE AJ

INTRODUCTION

[1] This is an application by the Applicant for leave to appeal against the order in this matter which was delivered on 23 July 2024.

[2] A written judgment was delivered wherein the reasons for the order were given.

[3] On 14 August 2024, the Applicant brought an application for leave to appeal. The grounds upon which the application was premised are fully set out in the application for leave to appeal.

LEAVE TO APPEAL

[4] Applications for leave to appeal are dealt with in terms of the provisions of Rule 49 of the Uniform Rules of Court read with sections 16 and 17 of the Superior Courts Act 10 of 2013 ("the Act").

[5] Section 17(1) of the Act provides the test applicable to applications for leave to appeal. Section 17(1) reads as follows:

*"**17.** (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –*

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[6] An applicant applying for leave to appeal, is required to convince the court that there is a reasonable prospect of success and not merely a possibility of success. Section 17(1)(a)(i) of the Superior Courts Act, was dealt with in the decision of the Land Claims Court in the ***Mont Chevaux Trust v Tina Goosen and 18 others*** **2014 (JDR) 2325 (LOCC); 2014 JDR 2325** in which Bertelsmann J held that the use of the word *"would"* (as opposed to could) in the provisions as an indication that a threshold for leave to appeal has been raised. It was further held that the word *"would"* indicates a measure of certainty that another court would differ from the judgment appealed against.[1]

[7] In the matter of ***Ramakatse and others v African National Congress and another*** **(724/2019) [2021] ZASCA 31 (31 March 2021)**, the following was held at paragraph 10:

[1] ***Mont Chevaux Trust*** **at par 6.**

"…….I am mindful of the decisions at high court level debating whether the use of the word "would" as opposed to "could" possibly mean(sic) that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test for reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

[8] The Applicant's main ground of appeal emanates from the Applicant's contention that the motor vehicle has not been properly described in the court order, that was granted on 18 May 2022. The written judgment clearly states, why in the court's view, the motor vehicle is properly described, as the vehicle's description, engine number and chassis number correspond with the Natis document. The Applicant proffered no compelling reason why any other court would reasonably come to a different conclusion on this issue.

[9] The other main contention of the Applicant is the alleged change of *domicilium* address. The Applicant avers that the *domicilium* address was changed when the parties entered into the substitution agreement. It was conceded during argument, that no such proof of change of *domicilium* address was placed before the court for consideration. The Applicant further averred that the

statements received from the Respondent were sent to his new address and not to his *domicilium* address. No such statements were presented before court for consideration when the application was heard. The Applicant conceded during argument, that it was unfortunate that the statements were not attached to show that it was sent to a different address.

[10] It is acknowledged that in paragraph 7 of the judgment, the court erred in noting that the Applicant was silent on where he currently resides. The Court notes that the Applicant does state his residential address in paragraph 1 of his founding affidavit. The outcome of the judgment, however, does not turn on this issue, as it is common cause that the summons was served on the chosen *domicilium* address by affixing, in accordance with Rule 4 of the Uniform Rules of Court pertaining to service.

[11] Having regard to the above, the judgment and the prospects of success on the grounds as set out in the Applicant's notice of leave to appeal, I am not satisfied that the Applicant has made out a proper case that he will enjoy reasonable prospects of success on appeal.

[12] I therefore find that the Applicant did not demonstrate that he has prospects of success on appeal or that this matter raises any question of law or any matter of public importance, which would demand the attention of either the Full Court of this Division or the Supreme Court of Appeal.

[13] In the circumstances, I make the following order:

1. The application for leave to appeal is dismissed with costs.

VAN DER MERWE, AJ
ACTING JUDGE IN THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Counsel for the Applicant:	Adv TB Vukeya (Defendant)
Instructed by:	NKA Mathebula Attorneys
Counsel for the Respondent:	Adv D Senyatsi
Instructed by:	LGR Incorporated
Date of hearing:	18 October 2024
Date of judgment:	3 December 2024