



**IN THE HIGH COURT OF SOUTH AFRICA,**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 3394/2020

In the matter between:

**JOHANNES ALWYN LINDE**

**Plaintiff**

and

**FIRSTRAND BANK LIMITED**

**Defendant**

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**CORAM:** RAMLAL, AJ

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**HEARD ON:** 4 MARCH 2022

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**DELIVERED ON:** 29 APRIL 2022

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 13h30 on 29 April 2022.

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[1] This is an application for leave to appeal against the judgement and order of De Kock AJ wherein the applicant's application for condonation and rescission of the judgment granted on 15 October 2020 was dismissed.

[2] De Kock, AJ found, in a detailed judgment:

2.1 that the Respondent duly complied with the provisions of Section 129 and 130 of the National Credit Act and that the arrears were never settled;

2.2 that the main application was not premature and reinstatement of Section 129(3) and (4) of the National Credit Act was not possible;

2.3 that application for condonation and the application for the rescission of the judgment was dismissed as the Applicant failed to set for the any valid defences and

2.4 that the judgment was not erroneously sought or erroneously granted.

[3] Both, Counsel for the Applicant and for the Respondent, filed heads of arguments, for which I am grateful. These arguments contain the sequence of events that led to the judgment being granted and the events that culminated in the condonation and rescission application being dismissed.

[4] The application for leave to appeal is broadly based on the following grounds:

4.1 That the Learned Judge erred in finding, factually and legally, that the Respondent complied with Sections 129 and 130 of the National Credit Act;

- 4.2 That the Learned Judge erred in finding, factually and legally, that the Applicant failed to satisfy the requirements to succeed with the application for condonation by failing to set forth any valid excuse;
- 4.3 That the Learned Judge failed to take into account that the claim(s) of the Respondent at the time of obtaining the judgment was patently incorrect, alternatively flawed, further alternatively premature and still further alternatively not compliant to Section 129 of the Act.

[5] Section 17(1) The Superior Courts Act 10 of 2013<sup>1</sup> stipulates:

*“(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...”*

[6] In *S v Smith*<sup>2</sup> the approach to an application for leave to appeal was stated as follows:

*“What the test of reasonable prospects of success postulates is 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 order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”*

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<sup>1</sup> See Proclamation R. 36 of 2013 dated 22 August 2013 (Government Gazette 36774).

<sup>2</sup>2012 (1) SACR 567(SCA)

- [7] The Applicant's indebtedness towards the Respondent arose from the provisions of a loan agreement and overdraft facility. The Applicant was required to make payment of monthly instalments in terms of the loan agreement. He defaulted on these payments and also exceeded the overdraft facility limit. The court found that the procedures and processes had been duly complied with and the judgment was granted.
- [8] In respect of the Sections 129 and 130 National Credit Act ("the NCA") requirements not being met this aspect has been fully dealt with in the judgment delivered on 2 December 2021 and it is not necessary to restate those reasons here.
- [9] The consideration on whether to grant condonation is also fully expounded on, with relevant authority, in the written judgment.
- [10] More importantly, the reasons for the finding that the judgment had not been erroneously sought or granted has been considered against the facts of the case and the reasons therefor are contained in the judgment.
- [11] The Applicant failed to set forth any valid defences and the application for the rescission of the judgement was therefore dismissed.
- [12] Upon a thorough reading of the papers filed and the judgment of De Kock, AJ as well having due regard to the written Head of Arguments furnished, I am of the view that the appeal would have no reasonable prospects of success.

[13] I accordingly make the following order:

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

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AK RAMLAL, AJ

On behalf of the Applicant: Adv I Sander

Instructed by: KRAMER WEIHMANN & JOUBERT  
BLOEMFONTEIN

On behalf of the Defendant: Adv M C Louw

Instructed by: Symington de Kock Attorneys  
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