

REPUBLIC OF SOUTH AFRICA



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

Case No: 31948/19

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.

DATE:

SIGNATURE:

In the matter between:

SASFIN BANK LTD

First Plaintiff/ Respondent

SUNLYN (PTY) LTD

Second Plaintiff/ Respondent

and

MELAMED AND HURWITZ INCOPROATED

First Applicant/ Defendant

STEPHEN MELAMED

Second Applicant/ Defendant

JUDGMENT

Todd AJ

1. This is an application for leave to appeal against a judgment that I handed down on 24 August 2022.
2. The Second Applicant seeks leave to appeal on the ground that an appeal would have a reasonable prospect of success as contemplated in section 17(1)(a)(i) of the Superior Courts Act. In assessing prospects of success I follow the approach described in *Ramakatsa and others v African National Congress and Another* [2021] ZA SCA 31 at para 10.

3. The focus of the application was this court's decision to refuse the application for rescission brought under the provisions of Rule 31(2)(b). Ms Vergano, who appeared for the Second Applicant, submitted that there were reasonable prospects of persuading another court that the Second Applicant had shown good cause as contemplated in that provision, specifically that he had given a reasonable explanation for his default, that the application had been made *bona fide* and not for the purpose of delaying the matter, and that he had a *bona fide* defense to the claim. As regards the defense, Ms Vergano pointed primarily to the evidence of deficiencies in the wording of the suretyship agreement which had formed the basis for the claim against the Second Applicant.
4. A significant obstacle to the Second Applicant in the proceedings below was the need to seek condonation for the fact that rescission had been sought several months outside the 20 day period provided for in Rule 31(2)(b). That aspect of the matter was dealt with in paragraphs 20 to 22 of this court's judgment. The standard for interference on appeal against a decision on a matter of that kind, involving condonation for failure to comply with a time period in the Rules, is limited to the grounds set out in *Ex parte Neethling and others* 1951 (4) SA 331 (A) at 335D-E. (See also *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Limited* 2015 (5) SA 245 (CC) at [88].)
5. It seems to me that there is little prospect of success on appeal on this aspect of the matter, and that this is fatal to the present application.
6. For those reasons, the application for leave to appeal is dismissed, with costs.

C Todd

Acting Judge of the High Court of South Africa

REFERENCES

For the Second Applicant:	Adv. V Vergano
Instructed by:	Howard S Woolf Attorneys
For Respondents:	Adv. S Aucamp
Instructed by:	Smit Jones & Prat
Hearing date:	17 November 2022
Judgment delivered:	21 November 2022