

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO:

56527/2021

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES:
YES/NO
(3) REVISED.

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DATE

In the matter between:

MPHEPHU PETER TONY

Applicant

And

ANOOSHKUMAR ROOPAL N.O.

Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MAKUME, J:

- [1] On the 29th November 2022 I granted an order cancelling three vehicle sale agreements that the Applicant had concluded with VBS Mutual Bank (in Liquidation). In particular, I also ordered that the Applicant pay to the Respondent an amount of R5 586 555.16 being the amount due and owing to the Respondent arising out of the cancelled agreements.

[2] The Applicant now seeks leave to appeal that judgement and orders on various grounds set out in the notice of application.

[3] The test that a Court must or ought to apply in determining whether or not leave to appeal should or should not be granted has been crystallised in Section 17(1) (a) (i) of the Superior Courts Act 10 of 2013. That test has found expression in a number of decisions in the various divisions of the High Court including the Apex Court being the Constitutional Court.

[4] In **Four Wheel Drive Accessory Distribution CC vs Rattan N.O. 2019 (3) Sa 451 (SCA) at page 463 paragraph 34** the Court concluded as follows:

“[34] There is a further principle that the Court *a quo* seems to have

Overlooked

- leave to appeal should be granted only when there is a sound, rational basis for the conclusion that there are prospects of success on appeal.”

[5] Section 17(1) (a) (i) & (ii) reads as follows:

“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 judgements on the matter under consideration.

[6] Berterlsman J in one of the earlier cases shortly after this Act came into operation ruled as follows in the matter of **The Mount Chevaux Trust vs Tina Goosen & 18 Others [2014] JDR 2325 (LCC)**:

“It is clear that the threshold for granting leave to appeal against a judgement of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion see: **Van Heerden vs Cronwright and Others 1985 (2) SA 342 (T) at 343 H**. The use of the word “Would” in the new statute indicates a measure of certainty that another Court will differ from the Court whose judgement is sought to be appealed against.”

[7] I do not deem it necessary to deal with each and every ground of appeal save to say that none of them would stand any possibility of succeeding in the Appeal Court. The main grounds of appeal seem to be the Applicant's reliance on the principle of reckless credit granting, followed by prescription and lastly that the Applicant never admitted liability.

[8] Counsel for the Applicant on being asked what interpretation should be given to the letter dated the 8th July 2021 emanating from the Applicant's then attorneys to the Respondent attorneys in which those attorneys committed their client to make necessary payments. This was after the Applicant had received a Section 129 (1) letter. Counsel maintains that the letter is and cannot be interpreted as an unequivocal admission of debt. That

interpretation is flawed and deserves no further attention. There is in my view no reasonable prospects that this ground of appeal would be upheld.

[9] The ground of appeal relating to Reckless credit granting is closely linked to what the Applicant says that there was no proper assessment done to determine the Applicant's ability to make repayments of the instalments.

[10] In paragraph 32 to 36 of the Respondent's Replying Affidavit the Liquidator sets out information that confirm that indeed assessment was done based on documentation that the Applicant himself presented to the bank. I fail to understand what else the bank should have done to satisfy itself that indeed the Applicant will afford repayments. In this application Counsel was once more asked to explain what exactly the bank did not do. I did not get a clear answer.

[11] That ground of appeal in my view stand no chance of being upheld on appeal. The rest of the grounds of appeal deserve no consideration as they will not take the matter any further

[12] In the result I make the following order:

ORDER

1. The Application for Leave to Appeal is dismissed.
2. The Applicant is ordered to pay costs of this application which costs shall include costs of two Counsel.

Dated at Johannesburg on this day of June 2023

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances:

DATE OF HEARING : 21 JUNE 2023

DATE OF JUDGMENT : JUNE 2023

FOR APPLICANT : ADV VAN DER MERWE
INSTRUCTED BY : MESSRS BARNARD & PATEL INC.

FOR RESPONDENT : ADV EMIEL VAN VUUREN SC
WITH : ADV K ILES
INSTRUCTED BY : WERKSMANS ATTORNEYS