



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2022 - 049732

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

DATE
SIGNATURE

In the application by

**SATIN ROCK (PTY) LTD
R.L. DEVELOPMENT & CONSTRUCTION**

First Applicant
Second Applicant

And

TEICHMAN, MARK HERBERT

Respondent

In re

TEICHMAN, MARK HERBERT

Applicant

and

**SATIN ROCK (PTY) LTD
LEISHER, LORNA MARY
LEISHER, ANTHONY RAYMOND
R.L. DEVELOPMENT & CONSTRUCTION**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Leave to appeal – appeal lies against decision and against reasons for the decision

Rescission of judgment – common law - good cause – requirements of a reasonable explanation and a bona fide defence – Court has a wide discretion

Order

[1] In this matter I make the following order:

1. *The application for leave to appeal is dismissed;*
2. *The applicants are ordered to pay the costs of the application.*

[2] The reasons for the order follow below.

[3] This is an application for leave to appeal to the Full Court¹ of the Gauteng Division, Johannesburg, against the dismissal² of an application for the rescission³ of a default judgement granted in this Court. The applicants seek leave to appeal against paragraphs 1 and 3 of the judgement granted on 5 March 2024.

[4] In deciding an application for rescission a Court exercises a wide discretion.⁴ A court of appeal will not readily interfere with the discretionary decision of the court below because the -

¹ Section 17 (6) (a) of the Superior Courts Act 10 of 2013.

² *Satin Rock (Pty) Ltd and Another v Teichman* [2024] ZAGPJHC 224, 2024 JDR 0990 (GJ).

³ It is not disputed that the refusal of a rescission application is appealable. See *Pitelli v Everton Gardens Projects CC* 2010 (5) SA 171 (SCA) paras 26 and 27.

⁴ *RFS Catering Supplies v Bernard Bigara Enterprises CC* 2002 (1) SA 896 (C) 903D; *Brangus Ranching (Pty) Ltd v Plaaskem (Pty) Ltd* 2011 (3) SA 477 (KZP) paras 19, 28 and 30.

*“power of interference on appeal is limited to cases of the vitiating by misdirection or irregularity, or the absence of grounds on which a court, acting reasonably, could have made the order in question. The Court of appeal cannot interfere merely on the ground that it would itself have made a different order.”*⁵

⁵ *Attorney-General, Eastern Cape v Blom and Others* 1988 (4) SA 645 (A) 670D-F.

[5] In the judgement I dealt with the requirement of good cause⁶ in the context of the common law and rule 31 of the uniform rules in paragraphs 4 to 6, with the requirement of a reasonable explanation for the default in paragraphs 7 to 14, and with the requirement of a bone fide defence in paragraphs 15 to 27. In the application for leave to appeal the applicants did not rely on rule 42 (1) (a)⁷ but relies only on the common law.⁸

[6] The applicants and the other respondents in the main application referred to as the Leishers gave notice of their intention to oppose the main application but they never filed answering affidavits. Without prejudice settlement negotiations to place but when the matter did not become settled it was set down on the unopposed role for 22 February 2023. The matter was then removed from the role and on 21 February 2023 the applicants were advised that the new date would be sought and that no further delay would be tolerated. On 2 March 2023 the applicants advised that unless proposals made by them were accepted they would proceed in court. They did not file opposing affidavits as intimated in the correspondence on 2 March 2023.

[7] The matter was set down for 10 May 2023 and a notice of set down was served by email. The set down was uploaded to CaseLines. The set down was confirmed in an email message on 27 April 2023 and this message apparently found its way into the junk mail folder of the attorney dealing with the matter. The attorney was in hospital from 28 April 2023 onwards but during the period of her absence the CaseLines system was accessed in by the applicants' attorneys.

⁶ See *Government of the Republic of Zimbabwe v Fick and Others* 2013 (5) SA 325 (CC) paras 85 to 89.

⁷ dealt with in the judgement in paragraph 28.

⁸ Applicants' heads of argument para 5.2.

[8] No affidavit evidence was placed before the court dealing with the fact that the CaseLines system was accessed by the attorneys for the applicants.⁹ I concluded that the applicants for rescission had failed to give a reasonable explanation. I therefore concluded that the application for rescission could not be sustained as there was no reasonable explanation for the default.

[9] With reference to the merits of the claim it was explained that a loan amount of R4 million was paid into the bank account of the first applicant. It was, according to the applicants, a loan made to the Leishers¹⁰ and not to the first applicant.

[10] Mr and Mrs Leisher signed and acknowledgement of indebtedness on 8 October 2020 and they signed collectively of the second applicant and on behalf of the second applicant. The applicants subsequently adopted the view that the second applicant does not exist. I dealt with this averment in paragraphs 19 to 23 of the judgement. The applicants also stated that interest was only payable from the date on which the loan was to be repaid in full, and that in other words the loan would be an interest-free loan provided it was paid on due date. I dealt with this defence in paragraph 26 of the judgement.

⁹ Judgement para 12. See also *Wightman trading as JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) paragraphs 13 and 19.

¹⁰ The two directors of the first applicant.

[11] An appeal lies against the decision¹¹ of the court and not against the reason for the decision.¹² Section 17(1)(a)(i) and (ii) of the Superior Courts Act provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.¹³ Once such an opinion is formed leave may not be refused. Importantly, a Judge hearing an application for leave to appeal is not called upon to decide if his or her decision was right or wrong.

[12] In *Ramakatsa and others v African National Congress and another*¹⁴ Dlodlo JA placed the authorities in perspective. He said:

“[10] .. I am mindful of the decisions at high court level debating whether’s house the use of the word ‘would’ as opposed to ‘could’ possibly means 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 of 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

¹¹ Section 16 (1) (a) of the Superior Courts Act 10 of 2013.

¹² *Medox v Commissioner, South African Revenue Service* 2015 (6) SA 310 (SCA) para 10 and *Tecmed Africa (Pty) Ltd v Minister of Health and Another* [2012] All SA 149 (SCA) para 17.

¹³ See *S v Smith* 2012 (1) SACR 567 (SCA) para 7; *Mont Chevaux Trust (IT 2012/28) v Tina Goosen* 2014 JDR 2325 (LCC), [2014] ZALCC 20 para 6; *S v Notshokovu* 2016 JDR 1647 (SCA), [2016] ZASCA 112 para 2; *Member of the Executive Council for Health, Eastern Cape v Mkhitha and another* [2016] JOL 36940 (SCA) para 16; *The Acting National Director of Public Prosecution v Democratic Alliance* [2016] ZAGPPHC 489, JOL 36123 (GP) para 25; *South African Breweries (Pty) Ltd v Commissioner of the South African Revenue Services* [2017] ZAGPPHC 340 para 5; *Lakaje N.O v MEC: Department of Health* [2019] JOL 45564 (FB) para 5; *Nwafor v Minister of Home Affairs* [2021] JOL 50310 (SCA), 2021 JDR 0948 (SCA) paras 25 and 26; *KwaZulu-Natal Law Society v Sharma* [2017] JOL 37724 (KZP) para 29; *Shinga v The State and another (Society of Advocates (Pietermaritzburg Bar) intervening as Amicus Curiae)*; *S v O’Connell and others* 2007 (2) SACR 28 (CC); *Lephoi v Ramakarane* [2023] JOL 59548 (FB) para 4; *Mphahlele v Scheepers NO* 2023 JDR 2899 (GP), and Van Loggerenberg *Erasmus: Superior Court Practice* A2-55.

¹⁴ *Ramakatsa and others v African National Congress and another* [2021] JOL 49993 (SCA), also reported as *Ramakatsa v ANC* 2021 ZASCA 31.

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.”

[13] I conclude that there are no reasonable prospects of success on appeal.

[14] I therefore make the order in paragraph 1 above.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **5 JUNE 2024**

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INSTRUCTED BY

KAVEER GUINNESS INC

DATE OF ARGUMENT:

23 MAY 2024

DATE OF JUDGMENT:

5 JUNE 2024