

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

22/6/2023
DATE


SIGNATURE

Case no.: 2012/16759

In the matter between:

UMRA OMAR NOORMOHAMED

FIRST APPELLANT

IRFAN OMAR NOORMOHAMED

SECOND APPELLANT

DEFACTO INVESTMENT 210 (PTY) LTD

THIRD APPELLANT

And

ACACIA FINANCE (PTY) LTD

RESPONDENT

Coram: Dlamini J

Date of hearing: 08 June 2023

Delivered: 26 June 2023

JUDGMENT

DLAMINI J

INTRODUCTION

- [1] The appellants seek leave to appeal against the order and judgment of this Court delivered on 29 March 2023.
- [2] The appellants relies on various grounds for leave to appeal as contained in the Notice of Leave to Appeal as well as the Heads of Argument and submission made by Counsel for both parties before this Court.
- [3] The appellants have launched this application for leave to appeal in terms of Section 17(1)(a) of the Superior Courts Act.¹
- [4] The test for granting leave to appeal is now a higher one. The legislator's use of the word would in section 17(1) (a) (i) of the Superior Court Act imposes a most stringent and vigorous threshold.
- [5] This concept was captured thus by the Court in *Member of the Executive Council of Health Eastern Cape v Mikhita and Another*,² as follows "that a court may now only grant leave to appeal if it is of the opinion that the appeal would have a realistic chance of success not may have a reasonable chance of

¹ Act 10 of 2013

² (1221/15) [2016] ZASCA 176 (25 November 2016)

success. A mere possibility of success or even an arguable case is not enough”.

GROUNDS OF APPEAL

[6] In their grounds of appeal, the appellants submit that this Court erred in one or all of the following respects:-

- 6.1 In failing to find that the amount loaned by the respondent to the third appellant was the sum of R1 million.
- 6.2 The learned Judge failed to find that the interest cannot exceed the capital sum loaned and ignored the *in duplum* rule;
- 6.3 The learned Judge failed to take into consideration that the respondent accepted a sum of R1 020 000.00 in full and final settlement.
- 6.4 The learned Judge failed to take into consideration that the immovable property owned by the third appellant was in fact the primary resident of the first and second appellants and should not have declared it executable, without first having complied with Rule 46A of the uniform rules of this court.
- 6.5 That point 8 of the order granted by the learned Judge to have the third appellant reinstated in case number 85936/2018 makes no sense as the fourth appellant is not a party in that case.
- 6.6 The learned Judge failed to take into consideration that the provisions of Section 129 (3) (a) and (4) were not complied with by the respondent.
- 6.7 The learned Judge failed to take into consideration that this was a loan given by the respondent to the third appellant and that the provisions of the National Credit ACT 34 of 2004 are of application in this matter.

[7] The parties' further grounds of appeal, their heads of argument, this Court judgment including the entire record of appeal must be deemed to be incorporated in this judgment.

BACKGROUND FACTS

- [8] Briefly, summarized the facts are that the respondent had on 17 October 2013 entered into a Settlement Agreement with the appellants. This Settlement Agreement was made an order of Court on 16 October 2013. In the main, the respondent brought an application to enforce payments by the appellants in terms of the Settlement Agreement and various other ancillary reliefs which this Court has dealt with in the main judgment.

ISSUES

- [9] On the main, the appellants have raised the same grounds of appeal that were similarly raised by them in the main application. I have in the main judgment dealt extensively with each ground of the appellant's defence. In my view, the appellant's grounds of appeal are meritless and stand to be dismissed. For instance, the appellant's claim that a final payment of R200,000.00 was made in full and final settlement by the appellant. This defence is raised in circumstances where the respondent has launched this application to enforce the payment of the amounts in the Settlement Agreement that was made an order of Court.
- [10] There was no application before this Court to set aside the Settlement Agreement and the resultant Court order. The trite principle of our law is that any Court order remains valid and enforceable until it is rescinded, varied or set aside. In any event, the appellants are not left remediless, they can if they so wish bring an application to set aside the Settlement Agreement and the resultant Court order.
- [11] In light of the above, based on section 17 of the Act and the facts of this matter, I am not persuaded that there are any reasons or extraordinary circumstances in this matter that warrants the grant of leave to appeal which would have reasonable prospects of success or that there are any other compelling

reasons why the appeal should be heard, including conflicting Judgments on the matter under consideration.

[12] I am not convinced that the appellants have presented any facts that demonstrate that they have any prospects of success on appeal and therefore it would not be in the interest of justice to grant leave to appeal to the applicants.

ORDER

1. The application for leave to appeal is dismissed.
2. The appellants are to pay the costs of the respondent.



DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Date of hearing: 08 June 2023

Delivered: 26 June 2023

Appellants: Adv ND Khon
advkohn@gmail.com

For the Respondent: Adv D Linde
dlinde@rsabar.com