



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

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



DATE 6/11/23

SIGNATURE

Case Number: 31885/2022

In the matter between:

EMMANUEL KANU

Applicant

and

ABSA BANK LIMITED

Respondent

In re:

ABSA BANK LIMITED

Plaintiff

and

DEFINITE VALUE FASHION-ACCESSORIES CC

First Defendant

EMMANUEL KANU

Second Defendant

JUDGEMENT

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 6 November 2023.

BOKAKO AJ

INTRODUCTION

1. This is an application for leave to appeal a summary judgment. On the 15th of May 2023, this court granted a summary judgment against the first and Second applicants with costs. Consequently, on the 29th of May 2023, the Second Defendant, Applicant herein) caused an application for leave to appeal to be served on the Plaintiff's (ABSA Bank Limited) attorneys.(The Respondent).
2. This court's fortitude emanates from an application for summary judgment brought by the respondent in terms of Rule 32 of the Uniform Rules of Court. The applicant opposed the application on the basis that there is a bona-fide defense to the respondent's action and that there is a triable issue applicable to the claim.
3. Leave to appeal may only be granted where the Judge or Judges concerned are of the opinion that:
 - (a) The appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, including the conflicting judgments under consideration;
 - (b) Concerning the word 'would' in s 17 of the Superior Courts Act 10 of 2012 (the Act) sub-section 17(1)(a)(i) above, the Supreme Court of Appeal has found that the use of the word in the section imposes a more stringent threshold in terms of the Act, compared to the provisions of the repealed Supreme Court Act 59 of 1959.

4. See *Notshokovu v S* [2016] ZASCA 112 at (2). In *Acting National Director of Public Prosecutions and Others v Democratic Alliance in Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2016] ZAGPPHC 489 at (25), the court endorsed the notion of a higher threshold stating: 'The Superior Courts Act has raised the bar for granting leave to appeal.' In *The Mont Chevaux Trust [IT2012/28] v Tina Goosen & 18 Others* [LCC14R/2014, an unreported judgment from the Land Claims Court], Bertelsmann J held that:

“It is evident that the threshold for granting leave to appeal against a judgment 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 v Cronwright & Others* 1985 (2) SA 342 (T) at 343H.

BACKGROUND

5. On or about 29 OCTOBER 2019 the respondent entered into a written Instalment Sale Agreement with the applicant who purchased from the respondent a particular 2014 RANGE ROVER SPORT 5.0 V8, for the sum of R780 684.48. The respondent duly complied with its obligations in terms of the agreement and delivered the goods to the applicant.
6. The applicant is in breach of the said terms and conditions of the agreement. He failed to make punctual payments and was in arrears for R 75 410.70 as of 08 April 2022. The applicant failed to make payment to the respondent in terms of the agreement and is presently indebted to the Plaintiff for compensation in the sum of R 625 403.73
7. On or about 27 August 2020, the Second applicant bound himself jointly and severally as surety and co-principal debtor, in solidum to the respondent.
8. The respondent had accordingly complied with the National Credit Act 34 of 2005, namely; a notice in terms of Section 129 and read with Section 130(1)(a) and Section 131 as read with Section 130 and 131 of the National Credit Act 34 of 2005 and such was delivered by the respondent.

9. The respondent sought summary judgment against the applicant. The applicant contended that the respondent's summary judgment was merely a tactical move. Afterward, this court granted a summary judgment as prayed for.

GROUND FOR LEAVE TO APPEAL:

10. Firstly, the "*First and Second Applicants*" did not receive a notice in terms of Section 129 of the National Credit Act, Act 34 of 2005 ("the National Credit Act")
11. As a second ground of appeal, the applicant contends that they were not in breach of the agreement at the date of issuing of the summons and consequent upon the aforesaid that the granting of the Summary Judgment was unwarranted.
12. Final ground of appeal, the applicant was not indebted to the respondent in the amount of R780.684.48.

ANALYSIS

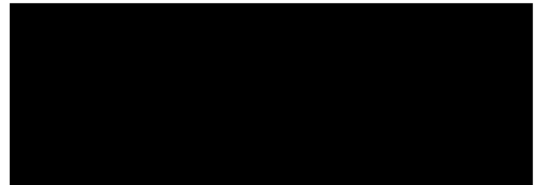
13. Despite the difficulties in the papers and my misgivings about the applicants' prospects, I have listened intently to the submissions advanced by Counsel for the respondent in the present application. The applicant chose not to be present in court without submitting any reasons.
14. The applicant continues to pursue similar arguments with the same allegations in his papers, which the respondent opposed. Still the applicant did not advance any material submissions refuting the respondent's assertions but continuously making bald statements and assertions. I am not poised that there is a reasonable prospect of success on the grounds set out above in his application for leave to appeal.
15. It is also evident that the applicants' affidavit was deficient to disclose a defense, and summary judgment was to be granted.
16. He further raised a ground that pertains to Section 129 of the National Credit Act, Act 34 of 2005 ("the National Credit Act") in that they did not receive the said notice in terms of Section 129. Such a proposition was never proffered as contended by the respondent and it is not contained in the affidavit resisting summary judgment. Under the circumstances, the respondent has fully complied with the requisite provisions of the National Credit Act, together with the jurisprudence relevant to it.

17. A second ground of appeal, the applicant contends that they were not in breach of the agreement. The applicant had conceded that they had breached the standard cause agreement.
18. Among the grounds advanced were that the Applicants have disclosed sufficient defense in their plea; therefore, the respondent is not entitled to summary judgment". This court finds there is no slightness of defense proffered by the applicant.
19. This court believes that the applicant had failed to make out a proper case in his papers. The grounds of appeal considered by the applicant, for the most part, are incorrect and unsubstantiated. He did not provide any substantial basis that warrants an appeal.
20. The applicant presented an unreasonable and unacceptable explanation for his failure to repay the respondent.
21. In applying legal principles to the facts of the instant application, it is plain that the applicant failed to meet the requirements for granting a leave of appeal. The respondent had a valid cause of action against him. The applicant admitted this much in his papers. The applicant always knew he was indebted to the respondent and failed to raise a defense.
22. The court does find that submissions made by the applicant in his papers are framed in diffuse and ambiguous sweeping terms. The court agrees with the respondent's contentions that the application is vague, ambiguous, and confusing to the extent that the respondent was not adequately informed of the grounds of appeal.
23. I can find no fault in the court's reasoning in granting summary judgment. In the context of this application for leave to appeal, the question is whether there are reasonable prospects of success on appeal. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion than that reached by the trial court in its judgment. Section 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on 23 August 2013, 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.' For the above reasons, the appeal does not have a reasonable prospect of success.
24. The appeal does not have a reasonable prospect of success. Another court is unlikely to conclude differently than this one. After considering the issues raised, the appeal would not have a reasonable prospect of success as contemplated in section 17(1)(a) of the Act.

25. In the circumstances, I make the following order:

Order

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



T.P. BOKAKO

Acting Judge of the High Court,
Gauteng Local Division, Pretoria

Date of Hearing: 20 October 2023

Date of Judgement: 6 November 2023

On behalf of the Applicant: NO APPEARANCE

On behalf of the Respondent: ADV M. JACOBS

