

- [2] The test in considering applications for leave to appeal is trite. Section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013 stipulates:
- “(1) 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.”
- [3] The use of the word “would” in s17 (1)(a)(i) raises the threshold of the reasonableness of the prospects of success. Previously all that was required for the applicant was to demonstrate that there was a reasonable prospect that another court might come to a different conclusion.
- [4] Largely the grounds of appeal as set out on the Notice to appeal are that my reasoning was erroneous in that I failed to take into consideration or give sufficient weight to Snyman’s explanation of events. Adv Knoetze SC, for the applicant, contended that:
- 4.1 I erred in my finding that the e-mails dated 06 and 07 March 2013, where the parties are referred to as “business partners”, does not refer to the importation of peanuts as GWK was still investigating that possibility;
- 4.2 The e-mail of 31 May 2013 by Mr Snoek to Mr Snyman of GWK was a mere proposal. That there was no reference to any email preceding this email that confirmed that GWK had agreed to pay Canon Garth Limited within 90 days from the bill of lading;
- 4.3 The issue was whether GWK had to pay within 90 days of the bill of lading. Since the responding email of 13 June 2013 by GWK did not agree to those terms there could never have been an agreement as alleged by Canon Garth;

4.4 The reference to ‘back-to-back’ contracts was not raised late but on the e-mail of 13 June 2013. It came to the fore in response to the email of 31 May 2013.

[5] Adv Basson, for the respondent, in his counter-argument contended that the improbabilities in this case militate against GWK’s averments. He urged that the application be dismissed.

[6] In my view, having regard to the issues for consideration, there is merit in the applicant’s submissions with regards to the interpretation of documentary evidence proving or disproving the obligation by GWK to pay Canon Garth within the 90 day period in order to conclude whether there was an agreement between the parties or not. It follows that I am persuaded that there are reasonable prospects that the appeal might succeed. Leave to appeal should be granted.

[7] In the result the following order is made:

1. The application for leave to appeal to the Full Bench of the Northern Cape High Court is upheld.
2. The costs of this application are to be costs in the appeal.

MAMOSEBO J

NORTHERN CAPE DIVISION

For the applicant/defendant:

Adv B Knoetze SC
Van de Wall Incorporated

For the respondent/plaintiff:

Adv JGW Basson
Haarhoffs Incorporated