REPUBLIC OF SOUTH AFRICA

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

Case Number: 27120/2017

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

16/10/2024 [redacted]

DATE SIGNATURE

In the matter between:

NICOLETTE ERASMUS **Applicant**

And

FIRST RAND BANK LIMITED t/a inter alia as
RMB PRIVATE BANK AND AS FNB **Respondent**

JUDGMENT

LEAVE TO APPEAL

Strydom, J

[1] This is judgment on application for leave to appeal against the whole of my judgment and orders as contained in paragraphs 3 to 8 of my judgment handed down by this Court on 22 April 2024.

[2] To be granted leave to appeal in terms of Section 17(1)(A)(i) and Section 17(1)(A)(ii) of the Superior Courts Act an applicant must satisfy the Court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

[3] Before this Court the argument for leave to appeal was based thereupon that there is a reasonable prospect that another court may come to a different decision. The applicant did not rely on some other compelling reason and the Court will therefore only deal with that ground to consider the leave to appeal application.

[4] The test of *a reasonable prospect of success* postulates a dispassionate decision based on the facts and the law, considering whether a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the applicant in this matter needs to convince this Court on proper grounds that she has reasonable prospects of success on appeal.

[5] Those prospects of success must not be remote as there must exist a reasonable chance of success, based on a sound rational for the conclusion that there are prospects of success. (*see*: *Ramakatsa and others versus African National Congress and others* unreported SCA case number 724/2019 (dated 31 March 2021)).

[6] The applicant filed a 27-page long notice of appeal. She largely repeated her argument advanced when the application was heard. In the main her continued complaint is that FirstRand Bank (the bank), after the single facility transaction account came into being, failed to continue to deduct amounts, by way of debit order instalments, to facilitate repayment of her credit facility or bond over a fixed period.

[7] She argued that the bank provided her with an amortised loan which no longer was implemented, to be as such, by the bank. This, she argued, conflicted with the contractual arrangement between her and the bank.

[8] She argued that during 2004 she signed another debit order in terms of which the credit facility was to be repaid, and that this situation should have prevailed until the full facility was repaid.

[9] She argued that the facility letter dated 27 September 2005 did not alter the position and the reference to the deposit facility did not mean that the credit facility would not be paid off, albeit within this single facility transactional account.

[10] What happened was that a monthly minimum instalment was required, but this was only in relation to interest and there was no longer a down payment of the capital part of the facility.

[11] What in fact happened here was that any portion of the capital which was repaid became available to the applicant as a readvance. She made use of the readvance portion of the facility. This caused the minimum monthly payments to increase to repay the facility during a shorter period.

[12] The Court dealt with this argument in detail in its judgment and the Court is of the view that another court would not come to a different conclusion and order than the order of this Court. The same applies to the argument that the Court went wrong as far as the alleged breaches of the National Credit Act are concerned.

[13] On behalf of the bank the Court was requested, should the application for leave to appeal be refused, to make a punitive cost order on attorney and client scale.

[14] It was argued that the grounds for leave to appeal set out in the application were vague, ambiguous, repetitive and verbose and further that the grounds of appeal are a mere regurgitation of the arguments already made by the applicant during the hearing of the main application.

[15] The Court is not inclined to make a punitive cost order. The Court took into account the fact that the applicant acted in person and is of the view that some leeway should be allowed in a case like this. She argued her own case quite competently so, I must say, but on the other hand, I must also agree with Mr

Shepstone acting for the bank, that her argument was unnecessarily long and verbose.

[16] The Court makes the following order:

a. Leave to appeal against my judgment and order is refused with costs.

[redacted]

R STRYDOM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Heard on:	10 October 2024
Delivered on:	10 October 2024

Appearances:

For the Applicant:	Ms. N. Erasmus
Instructed by:	In person.
For the Respondent:	Adv. R. Shepstone
Instructed by:	AD Hertzberg Attorneys