



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 3379/2020

In the matter between:

TIMAC AGRO SOUTH AFRICA (PTY) LTD

Plaintiff

and

THEUNIS LODEWYK ADRIAAN NEL

Defendant

HEARD ON: 19 JULY 2024

JUDGMENT BY: MHLAMBI, J

APPLICATION FOR LEAVE TO APPEAL

[1] This an application for leave to appeal against a judgment and order granted on 07 December 2023. The order reads as follows:

- "1. The plaintiff's action is declared to have been issued prematurely.*
- 2. The plaintiff may not commence any legal proceedings to enforce the agreement between the parties before:*
 - 2.1 First providing the defendant with a notice as contemplated in section 129(1)(a) of the National Credit Act 34 of 2005; and*

2.2 *Meeting any further requirements set out in section 138(1) of the National Credit Act 34 of 2005.*

3. *The plaintiff to pay the costs of suit."*

- [2] The application is predicated on the provisions of section 17(1) read with section 17(6)(a) of the Superior Court Act 10 of 2013, ("the Act"), for leave to appeal to the full court of this Division or the Supreme Court of Appeal.
- [3] The application is opposed. On 27 February 2024 I gave a directive that the parties should file heads of argument as I intended to dispose of the matter in terms of section 19(1)(a) of the Act. The applicant filed both heads and replying heads of argument to the respondent's heads of argument. Both sets of the heads of argument are extensive. The applicant made persuasive arguments that, in the light of the order made, the court should have postponed or adjourned the trial to enable the plaintiff to comply with the provisions of the National Credit Act, ("the NCA"), whereafter the plaintiff would have been entitled to resume the action. This argument was based on the provisions of section 130(4)(b) of the NCA that if the credit provider has not complied with the relevant provisions of that Act, the court must adjourn the matter before it; and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed.
- [4] In the light of the above, I am therefore of the view that the applicant has reasonable prospects of success in the appeal and the application for leave to appeal should be granted.

- [5] I therefore make the following order:

Order:

1. The application for leave to appeal to the full bench of the Free State Division of the High Court is granted.
2. Costs of this application shall be costs in the appeal.


MHLAMBI, J

On behalf of the plaintiff: Adv. DD Swart
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On behalf of the Defendant: Mr HSL Duplessis
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