

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appeal Case no: A150/2023
Case Number: 11829/2020

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

31 January 2025
DATE


SIGNATURE

In the matter between:

QIN JIANG

First Appellant

LUOYA HUANG

Second Appellant

and

STANDARD BANK OF SOUTH AFRICA LIMITED

Respondent

JUDGMENT

Mkhabela AJ (Van der Westhuizen J and Kooverjie J concurring)

Introduction

[1] This is an appeal against the order and judgment granted by the Court *a quo* in terms of which the Court dismissed an exception by the appellants to the respondent's particulars of claim.

[2] The facts are largely common cause and could be summarised briefly as follows.

[3] The appellants secured a home loan agreement with the respondent. This was on 18 March 2004.

[4] As security for the indebtedness arising from the loan agreement, the appellants caused two mortgage bonds to be registered over the immovable property which they own in favour of the respondent.

[5] The appellants then defaulted with their obligations in terms of the loan agreement in that they failed to effect full and punctual payment of the monthly instalments as and when they became due and payable.

[6] As a result of the appellants' breach of the agreement in failing to make full and punctual payment, the respondent issued summons.

[7] Consequently, the appellants filed a notice of intention to defend and subsequently filed a notice of exception, which was followed by the exception which is the subject of this appeal.

[8] The grounds of exception were first, that the particulars of claim are vague and embarrassing and secondly, that the particulars of claim lack averments necessary to sustain a cause of action.

[9] The exception was heard and dismissed by Mahlanga AJ. Upon application for leave to appeal, the Court *a quo* granted leave to appeal to the full Court of this division.

[10] Against the above salient backdrop, the only issue that arises crisply for determination in the appeal is whether the dismissal of the exception is appealable.

The Law

[11] The respondent made available a recent judgment by the Supreme Court of Appeal which held that that "the dismissal of an exception is not appealable, because

no legal obstacle stands in the way of the trial Court finally deciding a point of law. The dismissal of an exception is simply not a final decision, and until the matter is finally decided, an appeal does not lie to the Supreme Court of Appeal to pre-empt what the High Court has yet to bring to finality”.¹

[12] The question as to the appealability of a decision that is not final in effect, was also considered by the Constitutional Court in the case of Lebashe². After reciting the triad of principles laid down in Zweni³, the Constitutional Court held that “the test of appealability now is the interests of justice”.

[13] The dismissal of an exception, just like an interim order is not final, either in form or substance. It remains open for the trial Court to reconsider the grounds of exception when the trial ultimately commences.

[14] In this appeal the question of the appealability of the exception is a focal point given the rule of precedent since this Court is bound by the decisions of the Supreme Court of Appeal and the Constitutional Court unless of course the case before us is distinguishable from the quoted cases above.

[15] The Supreme Court of Appeal in the TWK case came to the conclusion that a dismissal of an exception is not appealable (save an exception to the jurisdiction of the Court) after quoting a long list of previous cases dealing with the same subject matter.

[16] Accordingly, in absence of any distinguishing features with the TWK case as well as the absence of any factors that could be regarded to be in the interests of justice, I am not persuaded that that the appeal should succeed.

[17] Whether the Court *a quo* was correct in dismissing the exception is not a question that should detain this Court sitting as an appeal court since doing so would be effectively entertaining the appeal.

¹ *Twk Agriculture Holdings (Pty) Ltd and Others v Hoogveld Boederlybelegings (Pty) Ltd* 2023 (5) SA 163 SCA

² *United Democratic Movement and Another v Lebashe Investment Group(Pty) Ltd and Others* 2023 (1) SA 535 (CC) .

³ *Zweni v Minister of law and Order* 1993 (1) SA 523 at 532I – 533A

[18] However, for whatever its worth, I feel constrained to mention that the appellants were unable to demonstrate the nature of their prejudice caused by the dismissal of the exception when invited to do so during oral arguments.⁴

[19] In my view, the fact that the appellants were not able to identify any discernible prejudice arising from the dismissal of the exception fortifies my conclusion that there is no consideration that could be relevant to the interests of justice which may have militated in favour of granting the appeal.

[20] Furthermore, this Court is bound to follow the holdings of the Supreme Court of Appeal and the Constitutional Court that the appealability of an interim interdict is decided by recourse to the considerations in *Zweni* and the interests of justice⁵.

[21] I have already alluded to the fact that in form and substance, the dismissal of an exception is akin to an interim order and therefore susceptible to the same triad principles laid down in *Zweni*.

[22] In the circumstances and for all the above reasons, the appeal is dismissed on the grounds that a dismissal of an exception is not appealable unless the interests of justice dictate otherwise.

[23] What is left is the question of costs. Now, it trite that the question of cost is the prerogative of the Court which involves the exercise of a discretion which in turn must be exercised judicially.

[24] Counsel for the respondent urged us to grant costs on attorney and client scale, which in our view is not warranted. The costs should follow the result.

⁴ It is well established in our law that an excipient must show that it would be seriously prejudiced if the exception is not upheld.

⁵ These principles are affectionately known as the triad of *Zweni* and they are the following; the first is that the order sought to be appealed must be final in effect and not susceptible to alteration by the court of first instance, the second is it must be definitive of the rights of the parties, in other words it must grant definitive and distinct relief, thirdly is that it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

Order:

[25] The appeal is dismissed with costs.



MKHABELA AJ
JUDGE (ACTING) OF THE HIGH COURT

I agree:



VAN DER WESTHUIZEN J
JUDGE OF THE HIGH COURT

I agree:



KOOVERJIE J
JUDGE OF THE HIGH COURT

Appearances

For the Appellants:	Mr Qin Jiang (In Person)
For the Respondent:	Adv C.G.V.O Sevenster
Instructed by:	Vezi & De Beer Incorporated
Date of hearing:	06 NOVEMBER 2024
Date of judgment:	31 JANUARY 2025