

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)
REPUBLIC OF SOUTH AFRICA**

CASE NO: 114305/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NP

27/03/2025

In the application between:

AIRCRAFT ASSET FINANCE CORPORATION

(PTY) LIMITED

(Registration No: 2003/029134/07)

Applicant

And

DEYMINE (PTY) LIMITED

(Registration No: 2017/304226/07)

First Respondent

CORNELIUS JOHANNES DEYSEL

(Identity No: 8[...])

Second Respondent

EVERT PHILIP SERFONTEIN

(Identity No: 8[...])

Third Respondent

EPS COURIER SERVICES CC

(Registration No: 1996/052772/23)

Fourth Respondent

EPS LOGISTICS CC

(Registration No: 2010/005466/23)

Fifth Respondent

Neutral Citation:

Delivered: By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT (Leave to Appeal)

SENYATSI J

Introduction

[1] This is an application for leave to appeal the judgment I handed down on 11 February 2025. The applicants, who are the respondents in the main application, criticise the judgment on eleven grounds. I will not repeat all eleven grounds of appeal raised by the applicants but will illustrate few of those grounds by way of example.

[2] They contend for instance, that the Court should have found that the denial of the amount owed raised a dispute of fact that should have been referred to oral evidence. They contend furthermore, by way of example, that the Court erred in finding that where the benefit of excursion has been waived, it is required that the creditor of the estate of the first respondent (in liquidation), should first file a claim with the estate of the liquidated company before it can enforce its rights embodied in the deed of surety.

[3] Advocate Botes SC for the applicant, pointed out that of the eleven grounds, he would put his emphasis on five. I will give an example of the two of out five as those are on record. Firstly, he submitted that on the issue of the amount claimed which was in dispute, the Court ought to have ordered oral evidence instead of

making a finding on the papers. This submission, in my view, ignores the fact that the certificate of balance which the parties agreed to in the main agreement was agreed to be used to determine the balance.

[4] Secondly, Advocate Botes SC, also contended furthermore that the deed of surety in terms of which the common law benefits were renounced by the respondents should have been ignored because of fairness to the sureties and that accordingly and that another court would conclude differently. I fail to fathom how that could possibly be the correct proposition because the law on this point is trite and uncontroversial.

[5] The requirement and the test for granting leave to appeal are regulated by section 17(1)(a) of the Superior Courts Act No. 10 of 2013 which states as follows:

“(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; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[6] In *Mont Chevaux Trust v Goosen and Others*¹ Bertelsman J interpreted the test as follows:

“It is clear 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...The use of the word ‘would’ in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[7] In *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In re: Democratic Alliance v Acting National Director of Public Prosecutions*² the court acknowledged the test by Bestertsman J and said the following:

¹ 2014 2325 (LCC)

² (Case no: 19577/09) ZAGPPHC 489 at para 25

“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*, Bertelsmann J held as follow:

‘It is clear 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. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.’”

[8] In *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*³, the Supreme Court of Appeal stated as follows regarding the trial court’s liberal approach on granting leave to appeal:

“It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonably prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possible of success.”

[9] Having heard the submissions made by counsel on behalf of the applicants, I am not persuaded that the appeal would succeed. Furthermore, I am not convinced that it is in the interests of justice based on the facts of this case that leave to appeal application should be favourably considered. The application for leave to appeal must therefore be declined.

Order

[10] The application for leave to appeal is dismissed with costs on scale B.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

³ (213/16) [2017] ZASCA 17 (22 March 2017)

DATE APPLICATION HEARD: 25 March 2025

DATE JUDGMENT HANDED DOWN: 27 March 2025

APPEARANCES

Counsel for the Applicant: Adv Clive van der Spuy

Instructed by: Lanham-Love Galbraith-van Reenen In

Counsel for the first Respondent:

Instructed by:

Counsel for the 2nd to 5th Respondents: Adv FW Botes SC

Instructed by: Macintosh Cross & Farquharson