



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 18693/2020

In the matter between:

WALSER WINE PROJECTS (PTY) LTD

Plaintiff

and

WINE MACHINERY GROUP (PTY) LTD

Defendant

Heard: 21 February 2025

Judgment: 21 February 2025

**JUDGMENT
(application for leave to appeal)**

Handed down by email to the parties
on 21 February 2025, that date being the date of the Judgment

KANTOR, AJ:

1. The parties shall be referred to as in the action in which judgment was handed down on 6 December 2024 ("the judgment"), dismissing the plaintiff's claim with costs. Definitions employed in the judgment will be employed in this judgment.
2. The plaintiff applies for leave to appeal.
3. In terms of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013 ("the Act") the question in an application for leave to appeal is whether an *appeal would have a reasonable prospect of success*.
4. The application for leave to appeal and argument in respect thereof did not suggest that leave was sought in accordance with 17(1)(a)(ii) of the Act (*there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration*). I agree that there is no basis for this provision to be invoked.

The test on application for leave to appeal

5. The defendant argued that the amendment to the Act created a higher threshold for the test in an application for leave to appeal.
6. Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021) is the most recent decision of the Supreme Court of Appeal on the issue the test to be applied in respect of section 17(1)(a)(i) of the Act (see also MEC for Health, Eastern Cape v Mkhita 2016 JDR 2214

(SCA), which is to the same effect as Ramakatsa. Albeit marked reportable, Ramakatsa has not been reported, as far as I am aware. It was held as follows therein at paragraph 10 (footnotes omitted):

“Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that ‘but here too the merits remain vitally important and are often decisive’. I am mindful of the decisions at high court level debating whether the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.” [underling added]

7. In Smartpurse Solutions (Pty) Ltd v Firststrand Bank Ltd [2025] 1 All SA 552 (GJ), the court delivered an in-depth historical exposition of the test for leave to appeal over the past century. The court found at paragraph 68 that what an applicant must demonstrate is that there is a “reasonable prospect of success” on appeal.
8. In my view, the effect of Ramakatsa and Mkhita, effectively presented in Smartpurse, is that the test on application for leave to appeal remains the same as it has been for over a century, the use of the word ‘would’ in section 17(1) of the Act did not create a higher threshold and the wavering in the cases in this

respect has been put to bed.

The application for leave to appeal

9. I have considered the application for leave to appeal and the submissions made on behalf of the parties. This includes the application for leave to appeal which runs to 25 pages and the heads of argument filed by the defendant which run to 39 pages.
10. The judgment is lengthy (64 pages) and traverses many topics.
11. I do not intend to re-traverse these topics, nor to consider in detail the content of the application for leave to appeal and the defendant's written submissions. My reason for this is because I am of the view that one particular aspect alone precludes a conclusion that would satisfy the test as explained in Ramakatsa: "The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court."
12. I will deal briefly with this aspect and two others related to it which further reinforce my conclusions. In regard to the further detail as to these aspects and the judgment, my view is that the reasoning and result in respect thereof in the judgment has not been assailed in any material respect and that the submissions in the defendant's heads of argument in the application for leave to appeal (save in respect of there being a higher threshold) add somewhat forcefully to that reasoning and result.
13. Danilewicz, one of the experts, explained the role of iron and iron oxide (rust) in

wine. Corroded iron or rust does not have some special property affecting wine beyond the role of a catalyst, and that, if it did, this would be a new concept in chemistry which would be studied intensely. The plaintiff's counsel made it clear that he was not going to suggest otherwise:

"MR COETSEE: When you say it has got a lot of iron in it, then I am supposing you are referring to the measured Fe level, but then you say the ordinary Fe^{3+} , what do you mean by the ordinary Fe^{3+} ?

MR DANILEWICZ: I think I meant to the Fe^{3+} , that is normally present in wine. It is not an imaginary Fe that has special catalytic properties. Because all the time you have got this proposal that rust produces this, what they call, corroded iron and somehow corroded iron implies to have a special property. So when I say ordinary Fe^{3+} , I mean the one that is present in wine, the one that I know, not the one that I have never heard of.

MR COETSEE: You can accept that I will be asking you about Fe^{2+} and Fe^{3+} the way you know it. I will not be referring you, or suggesting, or hinting at some mysterious other form of iron. It will be either Fe^{2+} , or Fe^{3+} . That you can take as a given Dr Danilewicz."

"DR DANILEWICZ: ... The idea that the point was made that during the bottling procedure, there was no rust visible Mr Ellis suggested that you don't have to see the rust. It could be there, not visible. And it could dissolve or go into the wine, and you wouldn't be able to measure it. That is totally not possible. So I don't know what exactly you're drifting [*sic* - should be "driving"] at, but that's what I understand the situation is, as far as metals and rust are concerned. The thing is that if there was another species, some very, very potent catalyst, you've got to remember there'd have to be two because they enter the Redox cycle. And as far as I know, there is no other. And I don't know, if there were, it would be an extremely interesting phenomenon which I think people would be looking at intensely. Because if it happens in iron, it could happen in all the other metals, in cobalt, nickel, manganese. You know, that would be new concept in chemistry.

MR COETSEE: You can accept, Dr Danilewicz, I'm not going to suggest to you that there's a new concept in chemistry." (emphasis added)

14. That an increased iron concentration will affect the rate of oxidation of the wine but not the amount or extent of oxidation, as testified by Danilewicz, was accepted by the plaintiff's counsel during his cross-examination:

"DR DANILEWICZ: So, I agree that if you add iron in either form, in this first phase of oxidation, you will increase the rate of oxidation, but you will not increase the amount of oxidation. Do you see what I mean? At the end of the phase, at the end of this rapid phase, the iron won't increase the amount of oxidation. It won't increase the amount of SO_2 that is used. (emphasis added)

[...]

MR COETSEE: You can accept that there's no dispute about what you've just discussed."

15. Danilewicz explained that:

15.1. An increase in the iron content of wine, including if accompanied by copper, accelerates the rate of oxidation but does not increase the amount or extent of oxidation.

15.2. The amount or extent of oxidation depends on the availability of oxygen.

15.3. In wine, oxidation cannot occur in the absence of oxygen.

16. He repeatedly pointed out, without contradiction, that the redox cycle responsible for the oxidation of wine (explained in detail in the judgment) was dependent on oxygen. Absent oxygen, oxidation of wine cannot take place and sulphur dioxide (SO_2) would not be consumed in the presence of Fe^{3+} (explained in detail in the judgment).

17. Oxidation of wine requires the presence of oxygen. The more oxygen present, the greater the prospect and extent of the oxidation.

18. Conversely, Danilewicz explained that in the absence of (sufficient) oxygen (or once it is depleted), no amount of iron in the wine will cause oxidation:

"And when I said to you that there were other oxidants, well, there are, but they don't happen to be in wine. The oxidant in wine is oxygen. I don't think there's any presence of any significant sources of oxidation in wine, oxygen is the oxidant in wine. In other systems, it might be something else, potassium chromate, potassium manganate. There are lots of oxidants that could be, but not in wine, it's oxygen. And the iron that you're adding through this, in this process, will do nothing at all unless there's oxygen. Unless the cycle works, the iron can't cycle."

19. This means that in the absence of oxygen, there is no functioning redox cycle and oxidation does not happen, no matter the presence of Fe^{3+} .

20. Danilewicz was not challenged on any of the above aspects.
21. The question is whether iron or iron oxide (rust) from the Filler (if it was there at the time of the winemaking and in contact with the wine flowing through it) was a material cause of the oxidation.
22. This brings into focus portion of the plaintiff's summary of its case:
- 2.1 As a result of the lack of pickling and passivation, iron ions (in the form identified as Fe^{3+}) leached into the plaintiff's wines;
 - 2.2 The leached Fe^{3+} altered the chemical composition of the wine in that, as it entered the redox cycle, it oxidised polyphenols to create quinones which, in turn, bound free SO_2 ;
 - 2.3 The alteration of the chemical composition of the wines caused detrimental organoleptic changes in the wines;
 - 2.4 The chemical reactions and resulting organoleptic changes (which occurred independently of oxygen) damaged or spoiled the plaintiff's wines; and
 - 2.5 Even if the wines became spoilt as a result of another or contributing cause, the lack of pickling and passivation would, in such a case, still have been a cause (not necessarily the cause) of the wine becoming spoilt.
23. In essence, it appears to me that the plaintiff argues that what is described in 2.2 of its above-quoted summary resulted in the damage to and spoiling of the wines in question.
24. Danilewicz explained, quoted in paragraph 18 above, that various materials can cause oxidation in different substances (i.e. can be oxidants), but that wine only oxidizes if oxygen is present (i.e. the only oxidant in the case of wine is oxygen). Put another way, without oxygen being present in the wine or the air in the wine bottle headspace (the area between the cork and the wine), the wine cannot oxidise. He was not contradicted on this. It is noted that this is subject to there not being a problem resulting in the 'Oxygen Transmission Rate' ("OTR") through or past the cork being excessive, but that is a much slower process (usually over

a year) which does not apply to the instant matter in which the wines were alleged to have been spoilt within a few months.

25. I have explained in detail in the judgment how oxidation in wine occurs in what is known as a redox reaction or cycle (as testified without contradiction by Danilewicz and as confirmed by Mr Coetsee). It will not be repeated here.
26. Key to understanding this matter is an appreciation that the redox cycle continues until:
 - 26.1. the oxygen is depleted, in which event the wine will not become oxidised;
or
 - 26.2. the SO_2 is depleted (or reduced to below 10mg/l), in which event the wine will start to become oxidised.
27. It is common cause that iron is always present in wine, in varying degrees. Danilewicz explained that iron and rust are dissolved in wine and the latter is taken up in the form of Fe^{3+} . They do not, however, cause oxidation. They only act as a catalyst to speed up the rate of oxidation.
28. It is important to reiterate that Danilewicz explained that (he was not challenged on this):
 - 28.1. The effect of adding iron or iron oxide (rust) to wine is to speed up the rate of oxidation.
 - 28.2. It has no effect on the amount or extent of oxidation which occurs.
29. There was no expert evidence that rust causes the problems. On the contrary, the unchallenged expert evidence of Danilewicz is that wine is acidic and removes iron and rust taking it up in the form of Fe^{3+} . There is nothing in the

redox cycle which was not there before. Mr Coetsee, who appeared for the plaintiff, criticised this last sentence (which is contained in paragraph 101 of the judgment). What I was articulating was that the redox cycle does not have any new substance when Fe^{3+} is added because Fe^{3+} is already there as part of that cycle (i.e. the uptake of further Fe^{3+} is simply a case of some more of it being introduced to what is there already).

30. The result of all of the foregoing, in my view, is that there is no reasonable prospect of an appeal court finding that the uptake of iron/rust from the Filler caused the oxidation of the Wines and therefore there is no reasonable prospect of success on appeal.
31. Having debated much of the above with Mr Coetsee in oral argument, he argued that the uptake of Fe^{3+} from rust changes the chemical composition of wine by there being more Fe^{3+} which results in an increased rate of oxidation and that increased rate is what spoils the wine. There is no basis in the evidence for an increased rate of oxidation *per se* being a cause which spoils wine and none was canvassed with any of the witnesses, including the experts. In my view it is directly contradicted by the expert evidence, some of which is considered above. The only effect of added Fe^{3+} is to speed up the rate of oxidation and not for that increased rate *per se* to itself cause oxidation.
32. There are further problems with the plaintiff's case in this context which are dealt with in detail in the judgment. Suffice it to mention them briefly:
 - 32.1. In the bottling process, any portion of the wine is in the Filler for a matter of seconds, at most a minute or two, and even less is in contact with any

corrosion on the Filler. Even though, in my view, its pick-up makes no difference to the extent of oxidation, as considered above and in considerable detail in the judgment, there was in any event no evidence as to the quantity of rust/iron which could be picked up from a few seconds or a minute or two's contact with rust on the Filler. On this basis, too, the plaintiff has in my view failed to make out a case and has no reasonable prospect of success on appeal.

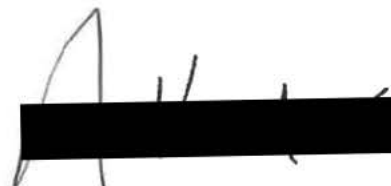
- 32.2. Related to, but standing independently of, the above aspect is that there was no evidence as to the quantity of rust/iron which would be required to cause the wine to spoil (again, even though its pick-up makes no difference as explained above and in considerable detail in the judgment). It would have been a simple task for the plaintiff to conduct a test with iron/rust and wine, but this was not done. On this basis, too, the plaintiff has failed to make out a case.

Conclusion

33. In my view, plaintiff has not established a reasonable prospect of success on appeal.
34. The application for leave to appeal therefore falls to be dismissed.
35. There is no reason for costs not to follow the result.
36. The parties were agreed that the employment of two counsel was warranted and that scale C in terms of Rule 67A should apply, the matter being complex.

37. The following order is granted:

The plaintiff's application for leave to appeal is dismissed with costs, including the costs of two counsel where so employed, with scale C in terms of Rule 67A applying.

A handwritten signature in black ink, appearing to read 'A. Kantor', is written over a solid black rectangular redaction box.

A Kantor
Acting Judge of the High Court