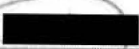


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2024-014083

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
28-May-2025	
DATE	SIGNATURE

In matter between

KNOWLEDGE OBJECTS HEALTHCARE (PTY) LTD

Applicant

and

INANI PROP HOLDING

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be *28-May-2025*

JUDGMENT ON LEAVE TO APPEAL

LESUFI AJ

Introduction

[1] This is an application for leave to appeal against my judgement and court order handed on the 24 January 2025. The appeal is brought in terms of Rule 49 of the

Uniform Rules read with section 17 of the Superior Act. The notice for leave to appeal was filed with the Registrar of this court on the 10 February 2025.

[2] The leave to appeal is brought by Knowledge Objects Healthcare (hereinafter referred Applicant). Inani Prop Holding opposes the leave to Appeal (hereinafter referred to as the Respondent)

Background Facts

[3] During August 2020 the Applicant and the Respondent entered into a written lease agreement in respect of a business premises. In terms of the lease inter alia the Applicant leased from the Respondent certain premises of a commercial nature and let for the purposes of conducting a business. The Applicant would pay the Respondent monthly. The Applicant failed to pay and withheld the rental payment in the amount of R 1 404, 206. 87.

[4] The Applicant in its particulars of claim communicated its election to cancel the lease in consequence of the breached agreement. The Respondent filed for summary judgement and the Applicant opposed the application and raised the defences to the Respondent 's claim. The essence of its defence is that the Respondent failed to comply with its reciprocal obligations in terms of the lease agreement.

Applicant's grounds of Appeal

[5] The grounds of appeal are set out as follows:

1. The court erred in finding that the affidavit deposed to by Mr Preshaan Ramsamy complied with rule 32(2) of the Uniform Rules of court.
2. The court erred by finding that Mr Ramsamy 's position as a Senior Assets Manager by implication means he had considered the lease agreement and reconciling statements.
3. The court erred in finding that Mr Ramsamy had in fact considered the lease agreement and reconciling statements by virtue of his position and responsibilities as Senior Assets Manager in circumstances where none

of the duties and responsibilities as assets manager of the applicant were sets out in the affidavit in support of the summary judgement.

4. The court erred in finding "all the documents relevant to this matter is under my control "means that the deponent, Mr Ramsamy, had considered the lease agreement and reconciling statements relevant to this matter and that he was satisfied that the amount was correctly calibrated, where this is not set out in the affidavit.
5. The court erred by finding that on the facts there were good grounds to believe that the deponent, Mr Ramsamy, had personal knowledge of the facts.
6. The court erred by finding from the facts as set out in Mr Ramsamy's affidavit that he was in fact able to swear positively to the facts alleged in the summons, annexures attached thereto, as well as the amount claimed, and whether there was a bona fide defence in circumstances where Mr Ramsamy failed to furnish particulars as to how the knowledge was acquired by him to enable the court to assess the evidence before it.
7. The court erred in failing to find that the affidavit deposed to by Mr Ramsamy lacked the necessary evidential material from which the court could make a finding that suffices as far as Rule 32(2) (a) requires.
8. The court erred in finding that there was sufficient information contained in the affidavit of Mr Ramsamy that would allow the court to make a factual finding that Mr Ramsamy is a competent deponent in the matter.
9. The court erred in failing to deal with the judgement of FirstRand Bank Ltd v Beyers 2011 (1) SA 196(GNP) when considering whether the applicant complied with Rule 32(2)(a).
10. The court failed to follow the decision of FirstRand Bank Ltd v Beyers 2011(1) SA 196(GNP) of the same division, alternatively, failed to set out

reasons why a decision of the same division based on the same point was not followed in this matter.

11. The court failed to set out why the judgement of *FirstRand Bank Ltd v Beyers* 2011(1) SA 196(GNP) was clearly wrong and should not be followed and clearly failed to consider the decision of Ex Parte Chairperson of the Constitutional Assembly, in re certification of the Amended Text of the constitution of the Republic of South Africa ,1997(2) SA 97(CC) that affirmed the principle that a court should adhere to its own previous decisions.

Respondent's opposition to the Application for leave to appeal

[6] The application is vigorously opposed by the Respondent. The basis for opposing is that none of the grounds listed in the notice of the application for leave to appeal have any merit and the judgement handed down is a well-reasoned judgement that cannot be faulted. That all the grounds listed are of a technical nature. The Respondent is of the view that none of the grounds listed by the Applicant indicates the Applicant has a bona fide defence. The Respondent contends the fact that it must appear from the verifying affidavit that the deponent has personal knowledge. This does not mean that the deponent must set out detailed facts demonstrating his personal knowledge. He therefore does not have to disclose the means or source of his knowledge. There was also no need for the court to provide reasons for not following the *FirstRand Bank Ltd v Beyers* judgement as the court clearly followed SCA judgements. Therefore, leave to appeal application must be dismissed as it is based purely on technicalities.

Issues for determination

- [7] 1. Whether this appeal has prospects of success.
2. Whether there is compliance with Rule 32(2)(a) of the Uniform Rules of the court.

The Law

[8] Rule 49 of the Uniform Rules of Court dictates the form and process of an application for leave to appeal and the substantive law pertaining thereto is to be found

in section 17 of the Superior Courts Act 10 of 2013(the Act). The latter Act raised the threshold for the granting of leave to appeal, so that leave may now only be granted if there is a reasonable prospect that the appeal will succeed. The possibility of another court holding a different view no longer forms part of the test. There must be a sound, rational basis for the conclusion that there are prospects of success on appeal. The interpretation of the Rules and the Law has evolved in case law since 2013. In numerous cases, the view is held that the threshold for the granting of leave to appeal was raised with the inauguration of the 2013 legislation (Superior Courts Act 10 of 2013). The former assessment that authorization for appeal should be granted if "*there is a reasonable prospect that another court might come to a different conclusion*" is no longer applicable.

[9] The words in section 17(1) that: "Leave to appeal may only be given..." and section 17(1)(a)(i) that: "The appeal would have a reasonable prospect of success" are peremptory. "If there is a reasonable prospect of success" is now that: "May only be given if there would be a reasonable prospect of success." A possibility and discretion were therefore, in the words of the legislation and consciously so, amended to a mandatory obligatory requirement that leave may not be granted if there is no reasonable prospect that the appeal will succeed. It must be a reasonable prospect of success; not that another Court may hold another view.

[10] The Court *a quo* may not allow for one party to be unnecessarily put through the trauma and costs and delay of an appeal. In *Four Wheel Drive v Rattan N.O.*,¹ the following was ruled by Schippers JA (Lewis JA, Zondi JA, Molemela JA and Mokgohloa AJA concurring):

"[34] There is a further principle that the court *a quo* seems to have overlooked — leave to appeal should be granted only when there is 'a sound, rational basis for the conclusion that there are prospects of success on appeal'. In the light of its findings that the Plaintiff failed to prove locus standi or the conclusion of the agreement, I do not think that there was a reasonable prospect of an appeal to this court succeeding that there was a compelling reason to hear an appeal. In the result, the parties were put through the inconvenience and expense of an appeal without any merit."²

Analysis

¹ 2019 (3) SA 451 (SCA).

² Id at para 34.

[11] Rule 32(2)(a) of the Uniform Rules requires the plaintiff to deliver a notice of application for summary judgement within 15 days after the defendant delivers their plea, the plaintiff shall deliver a notice of application for summary judgement, together with an affidavit made by the plaintiff or any other person who can swear positively to the facts. The application must be accompanied by an affidavit verifying the cause of action and the amount claimed, and explaining why the defendant's defence does not raise triable issue. The purpose of this rule is to streamline the process and ensure that plaintiffs can obtain judgements efficiently when the defendant has no genuine defense.

[12] What is required in terms of Rule 18 of the Uniform Rules of the court is that pleadings must provide a clear, and concise and contain statement of material facts upon which the pleader relies on. It ensures that all parties are informed of the case they have to meet. The deponent must confirm that he or she can swear positively to the facts, verify the cause of action and the amount claimed and identify any point of law relied upon which the plaintiff's claim is based and explain briefly why defences as raised does not raise any issue for trial.

[13] In the case of *Compensation Solutions (Pty) Ltd v Compensation Commissioner and Other*,³ the court said the following:

"A person's ability to swear positively to the facts is essential to the effectiveness of the affidavit as a basis for summary judgment; and the Court entertaining the application therefore must be satisfied, *prima facie*, that the deponent is such a person. Generally speaking, before a person can swear positively to facts in legal proceedings they must be within his personal knowledge. For this reason, the practice has been adopted, both in regard to the present Rule 32 and in regard to some of its provincial predecessors of requiring that a deponent to an affidavit in support of summary judgment, other than the plaintiff himself, should state, at least, that the facts are within his personal knowledge (or make some averment to that effect), unless such direct knowledge appears from other facts stated".⁴

[14] The Applicant is relying heavily on *FirstRand Bank Ltd v Beyers*.⁵ The *FirstRand Bank Ltd v Beyers* judgement is distinguishable from the present case in that in Mr

³ [2023] ZAGPPHC 253.

⁴ *Id* at para 12.

⁵ 2011(1) SA 196(GNP).

Beyers's case the bond or loan agreement existed between him and Boe Bank and not FirstRand Bank. The person who deposed the affidavit was not employed by Boe Bank and did not fully explain her *locus standi* and how she gained access to the Boe Bank records. Clearly in that case the affidavit of the deponent lacked pertinent issues. It is my view that *FirstRand Bank* case does not find any application in this matter.

Prospects of success

[15] In conclusion I find that the affidavit deposed by Mr Ramsamy on behalf of the Respondent in support of the application for summary complied with Rule 32(2)(a) of the Uniform Rules. It cannot therefore be faulted in anyway. I therefore find that there are no prospects of success on appeal.

[16] I therefore make the following order:

1. Application for leave of appeal is dismissed.
2. Applicant to pay costs on Scale A



B LESUFI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the Applicant/ Plaintiff:	Adv Carien van der
Instructed by:	Knowles Huisain Lindsay Inc.
For the Respondent/ Defendant:	Adv W Wannenburg Linde
Instructed by:	Fourie van Pletzen Inc. Attorneys

Date of the hearing: 4 April 2025

Date of judgement: 28 May 2025