



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 61907/2019

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


SIGNATURE

10 Jun. 25

DATE

In the application for leave to appeal of:

ILANGA AUTOMOTIVE (PTY) LTD
t/a CITROËN CENTURION

First Applicant

LANGA, BHEKI SIBUSIZO

Second Applicant

IYALOO, PRIVIN

Third Applicant

and

NEDBANK

Respondent

In re the summary judgment of:

NEDBANK

Plaintiff

and

ILANGA AUTOMOTIVE (PTY) LTD

t/a CITROËN CENTURION

First Defendant

LANGA, BHEKI SIBUSIZO

Second Defendant

IYALOO, PRIVIN

Third Defendant

JUDGMENT

LABUSCHAGNE J

- [1] This is an application for leave to appeal against an order that I made granting summary judgment in favour of Nedbank on 20 November 2021.
- [2] Nedbank's cause of action in the summary judgment proceedings was based on a breach of a Master Sale and Representation Agreement ("MSA") concluded by Ilanga Automotive (Pty) Ltd, t/a Citroën Centurion and Nedbank.
- [3] Clause 5.3 of the MSA obliged Citroën Centurion to procure that Nedbank be registered as the title holder of a vehicle prior to Nedbank effecting payment of the purchase price. In its plea, Citroën Centurion admitted that it had failed to register Nedbank as the title holder of the vehicle in issue. Based on that admission summary judgment was granted.

- [4] In an application for leave to appeal the applicant for leave raises a new point, namely that the admission was erroneously made without a mandate.
- [5] The contention is made that as the admission had been made in an error, that caused the court to make a misdirection in making a finding that was not consistent with the correct facts.
- [6] The applicant for leave to appeal contends that an application will be made on appeal to withdraw the admission.
- [7] It is however expressly stated in the application for leave to appeal that Citroën Centurion did in fact register the vehicle in the name of Nedbank as title holder on 07 September 2016.
- [8] That is however a date after Nedbank had already paid for the vehicle and in itself constitutes confirmation of the breach of clause 5.3.
- [9] A withdrawal of the admission is pointless in light of the admitted facts. These objective facts will not be affected by adducing further evidence on appeal as it would not introduce a triable issue.
- [10] Even if the admission were to be withdrawn, the date of the registration of the vehicle establishes that Nedbank had been required to pay for a vehicle on a date on which the vehicle was not registered in its name. The breach consequently stands unaffected.

[11] In light thereof I am not persuaded that the applicant has established prospects of success on appeal as required by section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013.

[12] In the premises the application for leave to appeal is dismissed with costs.

 _____

LABUSCHAGNE J

JUDGE OF THE HIGH COURT