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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
HELD AT PRETORIA**

CASE NO: 27859/2015

DOH: 26 June 2025

DECIDED: 08 July 2025

1) REPORTABLE: NO

2) OF INTEREST TO OTHER JUDGES: NO

3) REVISED.

DATE 08 July 2025

SIGNATURE

In the matter between:

CELEMUSA CHARLES HLATSHWAYO

Applicant

And

FIRST RAND BANK LIMITED

First Respondent

ALFRED MOKGOSINYANE

Second

Respondent

SHERIFF OF THE COURT N.O.

Third Respondent

REGISTRAR OF DEEDS

Fourth Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 08 July 2025.

ORDER

1. Leave to appeal is granted to the Full Court of this Division.
 2. Costs will be costs in the appeal.
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JUDGMENT

Bam J

Introduction

1. This is an application for leave to appeal the order granted by this court on 30 April 2024. That order struck the applicant's application from the court roll of urgent motions' week of 30 April 2024. The application was for an interim interdict, *inter alia*, to restrain fourth respondent from registering the transfer of the immovable property, more fully described later in this judgment, into the name of second respondent, pending finalization of Part B of the Notice of Motion. The application is opposed only by first respondent. First respondent submits that the application has no merit, is an abuse of this court's process, and must be dismissed with punitive costs.

Background

2. Applicant brought an urgent motion during the urgent court week of 30 April 2024, *inter alia*, to restrain the fourth respondent from registering the transfer of the immovable property described as ERF 5[...] W[...] Township, Registration Division LR Province of Gauteng, held under Deed of Transfer No: T 18119/2014, the property, into the name of the second respondent, pending finalization of Part B of the Notice of Motion. Applicant further sought a

temporary restraining order restraining second respondent from taking occupation of the property or executing any purported rights acquired by him pursuant to the sale in execution conducted by third respondent, pending finalization of Part B of the Notice of Motion.

3. The origins of the sale in execution may be traced back to the order, in terms of Rule 46A, granted by this court on 2 October 2023. In his founding affidavit supporting the urgent motion, applicant avers that he was still awaiting reasons for the 2 October 2023 order when, out of nowhere, he learnt on 10 April 2024 that his property was to be sold in execution the next day, 11 April. The application was opposed by first respondent. Amongst the points taken by first respondent was that the application was not urgent. First respondent traced the timeline and isolated various steps it had covered to bring the sale in execution to the attention and notice of the applicant.
4. As already indicated, the application was struck off the roll for want of urgency. Applicant has since brought the present application seeking leave to appeal. His grounds of appeal are set out in his notice of application and amplified in his Heads of Argument.

Applicable legal principles

5. Applications for leave to appeal are governed by Section 17 (1) (a) (i) to (ii) of the Superior Courts Act¹. The provisions read:

‘ (1) (a) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (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;’

¹ Act 10 of 2013.

Our senior courts have on occasion interpreted the provision. I refer in this regard to *Ramakatsa and Others v African National Congress and Another*, where the court stated, with reference to the provisions of s 17(1)(a)(ii) 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...’ However, the court cautioned that ‘merits remain vitally important and are often decisive’². In *MEC for Health, Eastern Cape v Mkhitha and Another*, it was said that, ‘An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’³

6. Against the background of these established legal principles, I now turn to consider applicant’s grounds.

Summary of applicant’s grounds of appeal

7. The essence of applicant’s grounds is canvased in his Heads of Argument. I do not intend to deal with each and every ground save to underscore the common thread that permeates the grounds. In summary, applicant submits that the court erred in striking the application off the roll and in not appreciating the looming urgency of loss of ownership of his home. The urgency, applicant avers, is founded on the fact that the sale in execution was held on 11 April. What remained was the registration of transfer of ownership, which would mark the end of his ownership of the property.
8. First respondent implored the court to dismiss the application, suggesting that the bank is entitled to finality. First respondent brought to the attention of the court that applicant has not serviced the mortgage loan over a lengthy period. It

² (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021), paragraph 10.

³ (1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 17.

was further submitted on behalf of first respondent that the grounds of appeal lack merit and amount to an abuse of this court's process.

9. I have considered the submissions made by counsel on behalf of both parties. Although I am of the strong view that striking a matter off the roll does not deal with the merits and thus does not alter the rights of the parties, I am of the respectful view that another court would come to a different finding on the issue. This means that leave to appeal must be granted.

Order

1. Leave to appeal is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.

N.N BAM J (Ms)
JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

Date of Hearing: 26 June 2025

Date of Judgment: 08 July 2025

Appearances:

Counsel for the Applicant:

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Instructed by:

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