

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2022-040937

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
18 July 2025	
DATE	SIGNATURE

In the matter between:

LIFTCOR (PTY) LTD

Applicant

And

ABSA VEHICLE MANAGEMENT SOLUTIONS (PTY) LTD

Respondent

JUDGMENT

Noko J

[1] The applicant launched an application for leave to appeal the order and the whole judgment I delivered on 21 February 2025 wherein I, *inter alia*, granted an order for *rei vindicatio* in respect of forklifts which were in possession of the applicant and dismissed an application to strike out certain paragraphs of the respondent's replying affidavit.

[2] The factual matrix of the *lis* is set out comprehensively in the judgment handed down and need not be rehashed in this judgment. The applicant contends that I erred in arriving at conclusion on the legal issues which served before me regarding the legal principles apropos the following subject matters: (1) ownership of movables, (2) *ius retentionis*, (3) estoppel, (4) disputes of fact and (5) section 359 of the Companies Act.

[3] As a point of departure, the applicant sought an order for the condonation of the late application for leave to appeal. The grounds upon which the application was predicated are clearly expounded in the application and require no repetition. The respondent is not opposing the said application. I had regard to the said application and am persuaded that a proper case has been made out for the condonation and find the same sustainable.

[4] It is trite that where the application for leave to appeal, the applicant must demonstrate, *inter alia*, that the appeal has a reasonable prospect of success or that there are other compelling reasons why the appeal should be heard.

[5] It is also trite¹ that the Superior Court Act has introduced a higher threshold to be met in applications for leave to appeal, and the usage of the word '*would*' require the applicant to demonstrate that another court would certainly come to a different conclusion.

¹ See *Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325. *MEC for Health, Eastern Cape v Mkhitha* 2016 ZASCA (25 November 2016), *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In Re Democratic Alliance v Acting Director of Public Prosecutions and Others* 2016 ZAGPPHC 489.

[6] The mere possibility of success, an arguable case, or one that is not hopeless, is not enough.² There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.³

[7] I have considered the reasons underpinning the grounds for leave to appeal relative to the judgment I delivered and have noted that arguments advanced are, in general, in sync with those advanced on behalf of the applicant before the judgment. I remain unpersuaded that the applicant has met the required threshold, and I am not persuaded that the appeal has reasonable prospects of success, and further that another court would come to a different conclusion, or that there are other compelling reasons to allow the appeal. To this end, the application for leave to appeal is bound to fail.

[8] Regard had to my findings I find myself in this instance constrained to follow the legal principle that the costs should follow the results.

[9] In the premises I grant the following order:

That the application for leave to appeal is dismissed with costs on scale B including costs for counsel where so employed.



M V Noko
Judge of the High Court

This judgement was prepared and authored by Noko J is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **18 July 2025**.

Date of hearing: 16 July 2025.

Date of judgment: 18 July 2025.

² *MEC for Health, Eastern Cape v Mkhitha* 2016 ZASCA (25 November 2016) at para 17.

³ *S v Smith* 2012 (1) SACR 527.

Appearances

For the Applicant:

MP van der Merwe, instructed by Couzyn Hertzog &
Horak Attorneys.

For the Respondent:

N Alli, instructed by Jay Mothibi Attorneys.