

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 028000/2023

DATE: 2025-07-21

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 21 July 2025

10 In the matter between



SIGNATURE

EXXARO COAL MPUMALANGA (PTY) LTD

Applicant

and

ABSA BANK LIMITED

Respondent

J U D G M E N T E X T E M P O R E

WILSON, J: The respondent, Absa Bank, applies for leave to appeal against my decision of 27 May 2025, in which I
20 directed Absa Bank to make payment on a demand guarantee to the applicant, Exxaro Coal, in the sum of just over R22-million. The demand on which I found that this amount was due was made on 19 June 2020. It was the second of two demands, the first of which was made on 10 June 2020.

In the court *a quo*, Mr Am, who appeared for Absa Bank, argued that those two demands were, in effect, one act of making demand. They ought to be treated, in other words, as one continuous demand. In my judgment, and for the reasons given there, I rejected that approach.

But for the fact that another court, in a different context, accepted that approach, I would have been of the view that this application for leave to appeal bears no prospects of success.

10 The sole basis on which I am convinced there is a reasonable prospect of success on appeal is that in an earlier iteration of this case, His Lordship Mr Justice Lamont, in dealing with the same facts, concluded that the demand of 10 June 2020 and the demand of 19 June 2020, constituted one continuous act of making demand.

I am not convinced by the reasons Justice Lamont gave for reaching that conclusion but I am bound to respect the fact that Justice Lamont reached it. It seems to me therefore, that I must, as a consequence, accept that there
20 is a reasonable prospect that another court might also reach that conclusion, even though I think that it is incorrect.

If another court reaches that conclusion and treats the demands 10 June 2020 and 19 June 2020 as one continuous act of making demand, then Absa Bank will

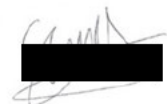
succeed in resisting Exxaro's claim for payment, since it appropriately rejected the 10 June demand. If there was one act of making demand and not two separate demands, then the rejection that I found was good was effective against both demands.

It follows that, purely on that factual issue, there is a reasonable prospect that another court would reach a different conclusion to the one I reached in my judgment and that it would dismiss the application that I allowed.

10 Accordingly, I am constrained to grant leave to appeal. Since the point on which I have found there are prospects of success is a purely factual issue, I shall grant leave to a Full Court of this division. By doing so I in no way wish to limit the arguments Absa may raise on appeal.

For all those reasons I make the following order:

1. The application for leave to appeal succeeds.
2. Absa Bank is granted to leave to appeal to a Full Court of this division against my judgment and order of 27 May 2025.
- 20 3. The costs of this application will be costs in the appeal.



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WILSON, J
JUDGE OF THE HIGH COURT
21 July 2025