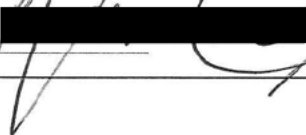




**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

|                  |                              |                                                                                              |
|------------------|------------------------------|----------------------------------------------------------------------------------------------|
| (1)              | REPORTABLE:                  | no                                                                                           |
| (2)              | OF INTEREST TO OTHER JUDGES: | no                                                                                           |
| (3)              | REVISED:                     |                                                                                              |
| Date: Signature: |                              |  21/07/2025 |

**CASE NO:** 6696/2022

**DATE:** 21 JULY 2025

In the matter between:

**SASFIN BANK LIMITED**

(Registration No. 1951/002280/06)

First Plaintiff

**SOUTH AFRICAN SECURITISATION PROGRAMME (RF)  
LIMITED**

(Registration No. 1991/002706/06)

Second Plaintiff

and

**BAITSHOKI SECONDARY SCHOOL**

Defendant

**Coram:** Ternent AJ

**Heard on:** 6 March 2025

**Delivered:** 21 July 2025

**Summary:** Summary Judgment – leave to appeal

*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 email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 21 July 2025.*

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## JUDGMENT: LEAVE TO APPEAL

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### TERNENT, AJ:

- [1] This is an application for leave to appeal by the defendant against the summary judgment and costs orders which I granted, in favour of the plaintiffs, on 26 September 2023. Leave is sought to the Full Bench of this division.
- [2] At the outset the application for leave to appeal<sup>1</sup> appears to take issue with defences which turn on the facts of the matter. The problem therewith as set out in the judgment, is that the deponent to the affidavit opposing summary judgment is the defendant's attorney of record, Mr MM Baloyi ("Baloyi") of MM Baloyi Attorneys Inc. As such he has no knowledge of the factual material pertaining to the conclusion of the two master rental agreements and their performance and, accordingly, any evidence in this regard is not within his personal knowledge and constitutes inadmissible hearsay.
- [3] When I raised this with the defendant's counsel, he accepted that any evidence given by Baloyi in the opposing affidavit on factual issues should be disregarded. It was submitted to me, however, that it would suffice for this Court to simply have regard to the plea that was filed in order to establish whether or not a *bona fide* defence has been made out by the defendant entitling it to defend the action.
- [4] The first ground of appeal took issue with the order that the defendant return the telephone equipment listed under Claim A, as this allegedly placed the defendant in an invidious position. The submission was that the defendant only received six SLT phones, and not the remainder of the

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<sup>1</sup> CaseLines 101-1 to 101-5

telephone system. Accordingly, it was submitted that the defendant cannot comply with the Court order, and would be found in contempt in circumstances where the complete telephone system has not been delivered to it.

[5] This, however, is clear from the defendant's plea. The defendant's plea, in an initial preamble, discloses that during the hard lockdown, as a consequence of the Covid-19 virus, the defendant school was closed.

[6] The plea goes on to aver that:

*"23. While the schools were closed down, there was a burglary at the defendant's school.*

*23.1 During the burglary the telephone system was damaged.*

*24. The defendant duly reported the burglary to Telelink.*

*24.1 At all material times, Telelink had ceded the goods to Sunlyn.*

*25. On or about November 2021, Telelink informed the defendant that the goods needed to be replaced at a cost of R48 200,00 (Forty Eight Thousand, Two Hundred Thousand Rand).*

*26. However, Telelink failed to perform in terms of its undertaking to replace the goods.*

*27. By failing to replace the goods, Telelink and by extension, Sunlyn repudiated the agreement. The defendant accepts the repudiation."*

- [7] This averment expressly provides that the telephone system was damaged in the burglary. Furthermore, in contending that the telephone system was damaged and, calling upon Telelink to replace it, is reasonably probable that the telephone system must have been in the defendant's possession prior to the burglary and the lockdown.
- [8] In addition, it is common cause that the rental agreement which was concluded between the parties for the telephone system is that which is annexed to the particulars of claim as Annexures "**SAS1a**" and "**SAS1b**". Importantly, Annexure "**SAS1b**" includes a certificate of acceptance<sup>2</sup> which discloses the signature of the defendant's principal, Blesciuous Matjoi Mongale. In appending his signature to the certificate he acknowledged that all of the telephone equipment had been delivered and installed at the defendant school. As such, the order made by me is sound.
- [9] To the extent that it was submitted, by the defendant's counsel, that the defendant pleaded that it only received the six SLT phones and that the remainder of the telephone system was not delivered, this is not unequivocally clear from the plea. Rather, there is a bald allegation that the defendant hired six SLT phones from Sunlyn<sup>3</sup> and a bald denial that the goods were delivered. These allegations contradict the aforementioned allegations relating to the burglary and damaged goods and the independent proof of delivery established by the certificate of acceptance.
- [10] Finally, if there were any inaccuracies or contradictions in the plea and/or the certificate of acceptance this could have been explained in the affidavit opposing summary judgment. This was not done. Instead, Baloyi refers to and regurgitates paragraph 50 of the plea averring that the defendant denied that the second plaintiff delivered the items listed to it and that this

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<sup>2</sup> Annexure "**SAS1b**", CaseLines 001-61

<sup>3</sup> Paragraph 36, CaseLines 005-9, Plea

is accordingly a triable issue.<sup>4</sup> As stated above, Mr Baloyi cannot deal with factual issues. In addition, paragraph 50 of the plea contains averments in response to paragraph 38 of the particulars of claim<sup>5</sup> where the allegation is made that the plaintiffs are entitled to be possessed of the goods under both of the rental agreements. It, accordingly, refers to all of the goods under both of the agreements. This paragraph does not refer to the telephone equipment alone.

- [11] The aforesaid, also, demonstrates the inherent contradictions in the plea which were not clarified in the affidavit opposing summary judgment and in fact were persisted with.
- [12] As a consequence, the defendant, who must stand by its plea and opposing affidavit, cannot succeed and this ground of appeal has no merit.
- [13] The second ground of appeal related to the second rental agreement in terms whereof the defendant rented photocopiers. As set out at paragraphs [42] and [43] of my judgment the defendant was obliged to insure the copiers for the duration of the agreement, in accordance with clause 8 of the rental agreement.<sup>6</sup>
- [14] The defendant chose not to do so. It being squarely the defendant's obligation to do so, CRS, the rentor, could not have repudiated the agreements by failing to replace the damaged photocopiers which also befell the same fate as the telephone equipment during the burglary. There is no merit to this ground of appeal either, and it must fail too.

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<sup>4</sup> Paragraph 9, Affidavit Resisting Summary Judgment, CaseLines 001-6

<sup>5</sup> CaseLines 001-40

<sup>6</sup> CaseLines 001-96

- [15] The final ground of appeal, although not raised in argument, appears at paragraph 7 of the application for leave to appeal.<sup>7</sup> Unfortunately the ground of appeal is somewhat confusing, which may explain why it was not raised in argument by the defendant's counsel.
- [16] On the one hand it is contended that the Court found that the defendant denied the conclusions of the agreements, in its plea.<sup>8</sup> At the outset, I did not make such a finding but rather pointed out that the pleadings were not a model of clarity and that there were many contradictions, as already mentioned. This also included the defendant (in respect of the first agreement) having denied its conclusion<sup>9</sup> and then subsequently admitting its conclusion. In respect of the second agreement it appears that the defendant may not have denied the agreement but was equivocal about its conclusion.<sup>10</sup>
- [17] That said, I accepted for the purposes of the summary judgment application that the conclusion of the agreements was admitted by the defendant more particularly because the defendant denied breaching the agreements and also averred that the agreements were repudiated (which indicate the conclusion thereof).
- [18] Although there is also a reference to the cession of the agreement, it appears to me that this ground of appeal does not relate to the issue of the cession but rather to the issue of the repudiation of the agreements. This has been dealt with in the judgment in paragraphs [46] and [47] and found to be wanting in the context of summary judgment.

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<sup>7</sup> CaseLines 101-4

<sup>8</sup> Paragraph 45, CaseLines 00-21

<sup>9</sup> Paragraphs 36 and 37, Plea, CaseLines 005-9

<sup>10</sup> Paragraph 41, CaseLines 005-10

- [19] Although the defendant's counsel's heads of argument made reference to the Consumer Protection Act and what he termed "*contradictory terms*" in the agreements these were not raised as grounds of appeal and were correctly not argued before me.
- [20] I am of the view that the application for leave to appeal is ill-considered and unfortunately befalls the same fate as the affidavit opposing summary judgment. There being no triable defences raised the application for leave to appeal must be refused.
- [21] The test for leave to appeal, as provided for in section 17(1)(a)(i) of the High Court Act, is that leave may only be granted where the Judge concerned is of the opinion that the appeal would have a "*reasonable prospect of success*".
- [22] In this regard the Supreme Court of Appeal in **Notshokovu v S**<sup>11</sup> confirmed that:
- "It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."*
- [23] The Supreme Court of Appeal has explained that the prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are

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<sup>11</sup> (157/15) [2016] ZASCA 112 (7 September 2016)

prospects of success.<sup>12</sup> An applicant must convince the Court on proper grounds that it has prospects of success on appeal and those prospects are not remote, but have a realistic chance of succeeding. More is required than a mere possibility of success, or that the case is arguable on appeal, or that the case cannot be categorised as hopeless.<sup>13</sup>

- [24] In the decision of **Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others**<sup>14</sup> Wallis JA observed that a Court should not grant leave to appeal and indeed is under a duty not to do so where the threshold which warrants such leave has not been cleared by an applicant in an application for leave to appeal:

*“[24] ... The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.”*

- [25] Accordingly, it is required of a lower Court that it act as a filter to ensure that the Appeal Court's time is spent only on hearing appeals that are truly deserving of its attention and that the test for the grant of leave to appeal should thus be scrupulously followed.

- [26] In the circumstances, I am of the view that there are no reasonable prospects of another Court coming to different conclusions to the ones reached by me. The appeal does not in my judgment have a reasonable prospect of success. Leave to appeal should therefore be refused.

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<sup>12</sup> **Ramakatsa and Others v African National Congress** (724/29) [2021] ZASCA 31 (31 March 2021)

<sup>13</sup> **S v Smith** 2012 (1) SACR 567 (SCA)

<sup>14</sup> 2013 (6) SA 520 (SCA)

[27] In the circumstances I make the following order:

[27.1] The defendant's application for leave to appeal is dismissed with costs.

[27.2] The defendant shall pay the costs of this application for leave to appeal to the first and second plaintiffs.

  
**P V TERNENT**  
*Acting Judge of the High Court of South Africa  
 Gauteng Division, Johannesburg*

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|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| HEARD ON:         | 6 March 2025                                                                                                                                                                                                                                                                                                    |
| DATE OF JUDGMENT: | 21 July 2025                                                                                                                                                                                                                                                                                                    |
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