

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

Case Number: 46591/2021

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

In the matter between: -

NONTSIKELELO FELICIA MVENYA

Appellant

AND

STANDARD BANK OF SOUTH AFRICA LIMITED

First Respondent

LAZARUS SHOMGWE

Second Respondent

[Application for Leave to Appeal summary judgment]

In Re:

STANDARD BANK OF SOUTH AFRICA LIMITED

Plaintiff

and

LAZARUS SHOMGWE

First Defendant

NONTSIKELELO FELICIA MVENYA

Second Defendant

[Summary Judgment Application]

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

[1] On or about 12 June 2024, the First Respondent instituted an application for leave to appeal the summary judgment order granted on 7 May 2024 ("Application for Leave to Appeal").

[1.1] The relief granted in the summary judgment application was in the following terms:

[1.1.1] Payment of the sum of *R817 461.80*, together with Interest thereon at the rate of 11.140% per annum calculated daily and compounded monthly in arrears from 20 September 2017 to date of final payment, both dates inclusive;

[1.1.2] The immovable property is declared specially executable for the said sum, interest and costs:

Erf [...] Rosettenville Township Registration Division I.R., Province of Gauteng, measuring 495 (four hundred and ninety-five) square metres subject to the conditions therein contained also known as: 1[...] H[...] S[...], R[...], Gauteng. ("Immovable Property");

[1.1.3] The Registrar is authorized and directed to issue a writ of execution against the hypothecated property above in accordance with the terms of this judgment; and

[1.1.4] A reserve price is set for the sale of the property in an amount of *R950 000.00*.

APPLICABLE LEGAL PRINCIPLES:

[2] Applications for leave to appeal are regulated by Section 17(1) of the Superior Courts Act 10 of 2013, which states the following:

[2.1] "17 Leave to appeal

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

(a)(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;*

(b) *the decision sought on appeal does not fall within the ambit of section 16(2)(a); and*

(c) *where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."*

[3] The standard used in leave to appeal applications has changed from that which was set out in the Supreme Court Act 59 of 1959, which has since been repealed. The traditional test that was applied by the courts in considering leave to appeal applications have been whether there is a reasonable prospect that another court may come to a different conclusion to the one reached by the court *a quo* [*Commissioner of Inland Revenue v Tuck* 1989 (4) SA 888 (T) at 890B].

[4] With the enactment of section 17, the test gained statutory authority. Pursuant to section 17(1)(a)(i), leave to appeal may now be granted only if the presiding Judge or Judges are satisfied that the appeal would have a reasonable prospect of success. This provision unequivocally raises the threshold for granting leave to appeal.

[5] The prevailing criterion is succinctly articulated in *The Mont Chevaux Trust (112012/28) v Tina Goosen and Others LCC14R/2014*, (3 November 2014) at paragraph 6, where the Court noted: "*the threshold for granting leave to appeal against a judgment of a High Court has been raised by the new Act.*"

[5.1] Under the previous standard, the inquiry was whether there existed a reasonable prospect that another court might arrive *at a different* conclusion (see *Van Heerden v Cronwright and Others 1985 (2) SA 342 (T) at 343H*).

[5.2] The employment of the word '*would*' in the new statute signifies a greater degree of certainty that another court will differ from the decision of the court whose judgment is sought to be appealed.

[6] According to section 17 of the Superior Courts Act 10 of 2013, the criterion for granting leave to appeal is whether another Court would come to a different conclusion, rather than whether another Court may come to a different conclusion.

[7] This position has been confirmed by other divisions of the High Court, making the current section more burdensome than the previous one.

[8] In *Valley of the Kings Thaba Motswere (Pty) Ltd [2016] ZAECGHC 137 (10 November 2016)*, Smith J recognised that the new standard established by "*prospect of success*" requires the judge, whose decision is subject to appeal, to objectively and impartially assess whether there are reasonable prospects that another court *would* find merit in the arguments presented by the losing party.

[9] In *Hunter v Financial Services Board 2017 JDR 0941 (GP)*, the court held that leave to appeal may only be granted if the court of first instance is satisfied that the appeal *would have* reasonable prospects of success or presents an arguable point. Accordingly, there must be substantive merit in the Appellant's grounds supporting the application for leave to appeal, and the Appellant must demonstrate to the court that the appeal would, rather than might, have reasonable prospects of success on either factual or legal grounds.

[10] In addition, Rule 49(1)(b) contains mandatory provisions requiring that a litigant in an application of this nature must clearly and succinctly articulate the grounds of appeal in unequivocal terms. (See *Songono v Minister of Law and Order 1996 (4) SA 384*)

APPLICATION FOR LEAVE TO APPEAL

[11] An application for leave to appeal the summary judgment order¹ was forwarded via e-mail to the First Respondent on 12 June 2024.²

[12] The grounds for appeal relied upon were that:

[12.1] the court failed to take into consideration the full record of filed notices, affidavits, part evidence and other documents which record forms an integral part of the reasons to appeal and that

[12.2] besides those arguments advanced in the original Heads of Argument filed on 17 October 2023 (Vide: Caselines 002-11 - 002-18), the court pertinently failed to consider the amended Heads of Argument by the Applicant dated 4 April 2024 (Vide: Caselines 014-8 - 014-18)

[13] The grounds of appeal are not articulated with the clarity and precision prescribed by Rule 49 of the Uniform Rules of Court.

[13.1] They are what was referred to by Leach J, as he then was, as a diatribe of pages criticising the judgment, analysing (at times incorrectly) certain of the evidence and the findings made, putting forward certain submissions. These criticisms of the judgment did not clearly and succinctly spell out the grounds upon which leave to appeal is sought in clear and unambiguous terms.

[14] Rule 49(4) provides:

“Every notice of appeal and cross-appeal shall state-

- (a) what part of the judgment or order is appealed against; and*
- (b) the particular respect in which the variation of the judgment or order is sought.”*

¹ 015-1

² 015-5

[15] The specific part of the judgment or order being challenged, along with the clear grounds for the challenge, must be explicitly identified.

[16] The Appellant's application was framed as broad assertions regarding the alleged non-consideration of the pleadings and heads of argument. Consequently, it does not meet the mandatory requirements stipulated in rule 49(4).

[17] The application for summary judgment was filed on 26 May 2018³ and subsequently an amended notice was served merely to include a prayer for a reserve price to be set.⁴

[18] I am of the opinion that such an amendment was not necessary as it is clear that when ordering executability, which formed part of the prayers in the summary judgment application, a court must consider whether a reserve price is to be set.⁵

[19] The reserve price serves as the minimum bid allowed at auction, below which the immovable property will not be sold. The court determines this amount by considering factors such as the property's market value, municipal value any outstanding debts (including mortgage bonds, rates, and levies), and the potential equity available to the debtor. This process establishes a threshold to prevent sales at values significantly lower than these assessed considerations.

[20] A reserve price is set for the protection of the debtor.

[21] In practice the court will set a reserve price.

[22] Although, as previously indicated, the grounds were not clearly specified in accordance with rule 49(4), I will address them in sequence below.

FAILURE TO CONSIDER ARGUMENTS IN HEADS 17 OCTOBER 2023⁶

³ 006-13

⁴ 006-59

⁵ Rule 46A(9)(a)

⁶ 002-11

[23] In her Heads of Argument dated 17 October 2023, the Appellant advanced the special defences of *locus standi*, securitisation of the debt, and estoppel. Additionally, she disputed both liability and the quantum claimed.⁷

[23.1] These defences were specifically addressed and thoroughly examined in paragraphs 16 to 39 of the judgment dated 7 May 2024.⁸

LOCUS STANDI AND SECURITIZATION⁹

[24] The Appellant contended that the First Respondent had securitised the mortgage loan agreement forming the basis of her claim and, as a result, had relinquished any right to pursue related claims. Nevertheless, during her testimony, she acknowledged owing the First Respondent an amount exceeding R1 000 000.00. The acknowledgment of indebtedness directly contradicts the securitisation defence as set out in her opposing affidavit.

[25] On 3 May 2018, the Appellant requested for the First Respondent to permit an inspection of the original title deed and signed bond loan documents, in order to verify the Appellant's *locus standi* to bring any claim against the Respondents. ("Annexure "NFM1")¹⁰

[26] The First Respondent was informed by Mr. De Beer of Liberty Fighters Network that if the First Respondent was no longer in possession of the documents held as security for the claimed debt, this would strongly indicate that the bond loan had been securitized and sold to another investor.¹¹

[27] When asked during the court hearing to explain the securitization defence in simple terms, the Appellant was unable to do so and merely referred the Court to her written Heads of Argument.

⁷ Paragraph 3 at 002-12

⁸ 000-6

⁹ 002-14

¹⁰ 006-70

¹¹ NMF6 at 006-84

[28] The Appellant clearly did not have personal knowledge of as was stated in the *ABSA Bank Limited v MJ Terblanche, Retha Terblanche (17220/2012) [2012] ZAWCHC 369 (30 November 2012)*, and did not give "*a sound foundation for the material facts said to underlie the defence.*" It was evident that the Appellant's argument lacked substantive support and was based on speculation.

[29] The Appellants' opposing affidavit likewise presented no evidence of any cession of the Appellant's claim to a third party. Additionally, she did not substantiate her assertion concerning the securitisation of the debt, as no details were provided regarding the terms of any cession agreement, nor was it indicated when or to whom the debt was ceded.

[30] Whist addressing the court, she testified of the parties as being herself and the First Respondent, bank. She made no reference to, nor did she acknowledge the involvement of, any third party.

[31] It is evident that the securitization defence is based solely on assumption, lacked factual support, and was not made in good faith. There is insufficient evidence for this defence to stand.

[32] The loan agreement¹² and the mortgage bond¹³ indicate that the parties thereto are the First Respondent, the Appellant, and the Second Respondent.

[33] The Appellant did not contest having signed the home loan agreement or obtained a mortgage bond with the First Respondent. The documentation clearly establishes that Standard Bank, as the lender, possesses *locus standi* to recover the sums advanced to both her and the Second Respondent.

[34] The Appellant indicated that she and the Second Respondent became co-owners of the immovable property in order to acquire a residence for herself and her children.

¹² 005-19

¹³ 005-52

[35] The Appellant also in her heads of argument submitted that the alleged agreement is null and void¹⁴ and therefore asserted a right to file a counterclaim against the Applicant for unlawful enrichment concerning any amounts paid in error. She placed reliance on *Offerman and Another v Swanepoel and Another* (6477/18P) [2022] ZAKZPHC 4 (10 February 2022).¹⁵

[36] Her reliance on the home loan agreement being void contradicts the defence of securitization and cession to a third party. If a contract is void, it has no legal effect from its inception. The Appellant did not specify the grounds on which she claims the home loan agreement is null and void, nor did she explain her continued payments to the First Respondent despite considering the home loan agreement void *ab initio*. The Appellant maintained that a court cannot validate an unlawful agreement by treating it as lawful; however, no substantiation for the alleged unlawfulness was provided.

ESTOPPEL¹⁶

[37] In the Heads of Argument, the Appellant contends that the First Respondent ought to be estopped from pursuing its claim on the basis of the Appellant's inability to inspect the original title deed and mortgage bond.

[38] The doctrine of estoppel by representation holds that a person (the representor) is legally prevented from denying the accuracy of a statement previously made to another individual (the representee), provided the representee relied on that statement and, as a result, suffered detriment.¹⁷

[39] The Appellant did not explicitly plead all the elements of estoppel in her Opposing Affidavit. There is not only a lack of a clear, unequivocal, and reasonably understood representation, but also no indication that any such representation was

¹⁴ Paragraph 10 at 002-13

¹⁵ Paragraphs 35--36

¹⁶ 002-17

¹⁷ *Aris Enterprises (Finance) (Pty) Ltd v Protea Assurance Co Ltd* [1981] 4 All SA 238 (A), 1981 (3) SA 274 (A) p. 291
SA Broadcasting Corp v Coop [2006] 1 All SA 333 (SCA), 2006 (2) SA 217 (SCA)

made negligently. If the Appellant intended to rely on estoppel, it was incumbent upon her to both plead and establish its essential elements.¹⁸

DEBT RISK INSURANCE¹⁹

[40] Upon presenting her case, the Appellant stated that she owed the Applicant money and noted that her last payment was made in 2018. She mentioned an instalment amount of approximately R17 000.00 and indicated arrears of about R1 000 000.00.

[41] Contrary to her testimony in court mentioned above, the Second Respondent stated in her Opposing Affidavit that the debt had been fully settled. In support of this, she made the following statements:

"25. Adding to the already mentioned, I am of the humble submission that the claimed debt had been fully paid once the bond loan was securitized and that neither the Applicant nor any other party has any further claim against the Respondents.

26. Alternatively, the Applicant already received full and final payment in respect of any claimed debt relating to the alleged claim by means of debt risk insurance and that the claimed debt had been settled accordingly. This aspect would be properly proved if this matter is allowed to proceed to trial. I had been further advised that there is sufficient authority to confirm that once a claimed debt is settled by another the claimed debt is settled in full and cannot be claimed any further.

[42] The Appellant claimed securitization or alternatively argued that the Respondents' debt was settled through debt risk insurance. Nevertheless, the court is unable to substantiate the claim due to the absence of any information regarding

¹⁸ *Blackie Swart Argitekte v Van Heerden* [1986] 1 All SA 373 (A), 1986 (1) SA 249 (A) p. 260
ABSA Bank Ltd v IW Blumberg & Wilkinson [1997] 2 All SA 307 (A), 1997 (3) SA 669 (SCA)
Roshcon (Pty) Ltd v Anchor Auto Body Builders CC [2014] 2 All SA 654 (SCA), 2014 (4) SA 319 (SCA)

¹⁹ 002-17

the insurer's identity, premium payments, and the settlement date. This is tantamount to a bold statement.

[43] The alternative claim is also indicative of the fact that the Appellant cannot confirm that the bond loan was securitized as alleged.

[44] The Appellant's defences are all unsubstantiated. The pleading of the defences in the alternative in itself is telling. Either the home loan agreement was void ab initio or there was securitization, or the debt was discharged by debt risk insurance.

HEADS OF ARGUMENT APRIL 2024²⁰

COMPLIANCE RULE 46A²¹

[45] Rule 46A(2)(b) required of the court to consider all relevant factors in determining whether execution is appropriate, aiming to protect the rights of the debtor if the execution process could result in deprivation of the right to access adequate housing as provided in section 26 of the Constitution.

[45.1] The judgment addressed all the pertinent factors to be considered before granting executability of the movable property.²²

[46] If the Appellant objected to the property being declared executable, the Appellant had to place facts and submissions before the Court to enable the Court to consider them in terms of Rule 46(6) of the Rules of Court.

[47] The evidence presented to the court concerning the Appellant's personal circumstances included the following:

[47.1] She stated that the property serves as her primary residence, as well as that of her two adult children—Lona, a 29-year-old daughter, and Zola, a 25-year-old son. According to the Appellant, the Second Respondent did not reside at the property.

²⁰ 002-52

²¹ 002-55

²² Paragraphs 44 onwards at 000-14

[47.2] The Appellant is gainfully employed and holds the position of assistant nurse at Helen Joseph Hospital in Johannesburg. Her daughter was previously employed in telemarketing and is presently unemployed, while her son is currently employed as an assistant in the waste management sector.

[48] The Second Respondent did not deny the market and municipal values or the rates and taxes owing or the suggested reserve price.

[49] The pleadings indicated that in February 2022, the municipal value of the property was *R747 000.00*, rates and taxes amounted to *R95 525.14*, the market value was *R1 250 000.00*, and a forced sale value of *R900 000.00* was noted.

[50] In March 2024, the municipal value was recorded as *R1 030 000.00*, rates and taxes were *R40 571.36*, the market value was *R1 350 000.00*, and the forced sale value was *R950 000.00*.

[51] The capital owing was *R1 491 120.76* with interest thereon at 12.640% per annum from 18 March 2024 to date of final payment. The arrears amounted to *R967 585.89*, and the monthly instalment was *R17 300.80.18*.

[51.1] These values are in line and corresponds with the testimony of the Appellant that she owes approximately *R1 000 000.00* and has a monthly instalment of approximately *R17 000.00*.

[52] Having taken all the above sworn values in consideration a reserve price was set of *R950 000.00*.

RULE 46A APPLICATION NOT PART OF SUMMARY JUDGMENT²³

[53] In her heads of argument, the Appellant contended that the summary judgment application was materially flawed, as it appeared to be a hybrid between an application for summary judgment and an application to declare immovable

²³ Paragraph 28 at 002-59

property specially executable. Furthermore, the notice before the court for this hybrid application did not comply with either Rule 33 or Rule 46A.

[54] The aforementioned argument is inaccurate, as the application for summary judgment requested both monetary relief and executability, thereby permitting consideration of Rule 46A. These are not separate applications.

[54.1] Clause 9.1 of the mortgage bond allows for executability of the immovable property.²⁴

[55] Rule 46A of the Uniform Rules of Court in South Africa governs procedures for executing judgments against a debtor's primary residence. The rule stipulates that courts must thoroughly assess whether the sale of a debtor's home is warranted, considering the individual circumstances of the debtor as well as possible alternative methods of debt recovery. Its purpose is to safeguard debtors from unjust loss of their homes while balancing this protection with the rights of creditors to pursue outstanding debts.

[55.1] Rule 46A states:

“46A. Execution against residential immovable property

(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2)(a) A court considering an application under this rule must—

(i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and

²⁴ 005-55

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

(b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.

...

(5) Every application shall be supported by the following documents where applicable, evidencing—

(a) the market value of the immovable property;

(b) the local authority valuation of the immovable property;

(c) the amounts owing on mortgage bonds registered over the immovable property;

(d) the amount owing to the local authority as rates and other dues;

(e) the amounts owing to a body corporate as levies; and

(f) any other factor which may be necessary to enable the court to give effect to subrule

(8) Provided that the court may call for any other document which it considers necessary."

[56] Mr Dladla's Supplementary Plaintiff's Affidavit submitted updated information under rule 46A for the court to declare the immovable property, described here in below, specially executable:

**ERF 3[...] ROSETTENVILLE TOWNSHIP REGISTRATION DIVISION I.R.,
PROVINCE OF GAUTENG, MEASURING 495 (FOUR HUNDRED AND NINETY
FIVE) SQUARE METRES SUBJECT TO THE CONDITIONS THEREIN
CONTAINED ALSO KNOWN AS: 1[...] H[...] STREET, ROSETTENVILLE,
GAUTENG**

(the "Property").

[57] The said rule 46A information would have been essential having regard to the lapse of time since 2018 and for the Court to properly assess a reserve price based upon recent values. The court also in 2024 requested updated market and municipal values and rates and taxes to determine the reserve price.²⁵

CERTIFICATE OF BALANCE²⁶

INCORRECT AMOUNT

[58] In the alternative, the Appellant asserted that, whilst not admitting any legal obligation to the Applicant, that:²⁷

[58.1] the bond loan would have to be recalculated at all interest rate and/or fees change and that the outstanding amount should have been recalculated at every such point;

[58.2] the amount claimed in the summons was incorrect;

[58.3] if the matter proceeded to trial, it would be possible to demonstrate that a lesser amount or no amount at all is owed.

[59] The Appellant was however required to do more than simply outline the disputes and needed to specify the grounds for contesting the First Respondent's claim, referencing the relevant material facts related to the disputes.²⁸ Whilst raising issues is appropriate in pleadings such as a replication, it is not the accepted approach in an affidavit opposing summary judgment.

[60] The opposing affidavit must clearly state the material facts of the defence. Vague or general claims are insufficient—the court is not required to find a defence within imprecise allegations.²⁹ The Appellant had to present her defence explicitly, or it must be evident from the affidavit's content.³⁰ The court will not make assumptions on the defendant's behalf.³¹

²⁵ 014-1 and rules 46A(9)(a) and 46A(9)(b)

²⁶ Paragraph 32 at 002-60

²⁷ 006-68

²⁸ *Chairperson, Independent Electoral Commission v Die Krans Ontspanningsoord (Edms) Bpk* 1997 (1) SA 244 (T) 249F–G.

²⁹ *Barclays Western Bank Ltd v Bill Jonker Factory Services (Pty) Ltd* 1980 (1) SA 929 (SE) 933B–C.

³⁰ *Premier Finance Corporation (Pty) Ltd v Rotainers (Pty) Ltd* 1975 (1) SA 79 (W) 82C–G.

³¹ *Gilinsky v Superb Launderers and Dry Cleaners (Pty) Ltd* 1978 (3) SA 807 (C) 810A

[61] The Appellant needed to present enough facts for the court to assess whether a defence exists, meeting the *bona fides* requirement in summary judgment cases.

[62] A defence that is incomplete, vague, sketchy, or brief may be considered to reflect negatively on the Appellant's *bona fides*. Conversely, if a defendant provides a comprehensive, clear, and honest defence, it may be viewed as reflecting positively on his/her *bona fides*.³²

[63] Mokgoka JA in *NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd* (314/2018) [2019] ZASCA 94; [2019] 3 All SA 391 (SCA); 2020 (1) SA 494 (SCA) (6 June 2019) held that:

"[11] Rule 32(3) of the uniform rules requires an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefor. To stave off summary judgment, a defendant cannot content him or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. If a defendant disputes the amount claimed, he or she should say so and set out a factual basis for such denial. This could be done by giving examples of payments made by them which have not been credited to their account." (my underlining)

[64] The Appellant was not required to give "a preview of all the evidence" but was expected to "set out facts which if proven at trial will constitute a good defence to the claim."³³ The Appellant was not expected to set out, "the full details of all the evidence which he proposes to rely upon", but the material facts must, "be sufficiently full" and not "averred in a manner which appears in all the circumstances to be needlessly bald, vague or sketchy."³⁴ Although, "the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he

³² *Creative Car Sound and Another v Automobile Radio Dealers Association 1989 (Pty) Ltd* 2007 (4) SA 546 (D&C) 556I–557A.

³³ *Cohen NO and others v Deans* 2023 JDR 1216 (SCA), para. 31.

³⁴ *Breitenbach v Fiat* 1976 (2) SA 226 (T) at 228C - E.

*must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness...*³⁵

[65] Although the Appellant admitted owing about *R1 000 000.00*, she did not specify and substantiate her reasons for disputing the claimed amount in the certificate of balance. This does not constitute an adequate basis for establishing a *bona fide* defence in summary judgment proceedings.

RIGHT TO FAIR HEARING³⁶

[66] The Appellant simply made the mere averment that her right to be heard by a fair, independent and impartial court as enshrined in section 34 of our Constitution was infringed without substantiating same under 2A of the heads.

[67] Impartiality was furthermore not raised as a concern during the summary judgment hearing.

PARAGRAPHS 2B, 2C, 2D, 2E, 2F, 3-7

[68] All of these paragraphs address matters - impartiality, a judge being previously briefed in bank matters and recusal, which emerged subsequent to the summary judgment hearing and have been appropriately considered and dealt with.

[69] The Supreme Court of Appeal, in *Road Accident Fund v Mothupi*³⁷ held that a court will not allow a new point to be raised for the first time on appeal unless it was covered by the pleading.

CONCLUSION:

[70] After considering the legal principles which requires the consideration of the reasonable prospects of success on appeal, it is my view that a court of appeal

³⁵ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426D.

³⁶ 2A at 015-24

³⁷ *Road Accident Fund v Mothupi* (518/98) [2000] ZASCA 27; 2000 (4) SA 38 (SCA); [2000] 3 All SA 181 (A) (29 May 2000) at 30

acting reasonably *would* not come to a different conclusion, and that the Appellant has no reasonable chance of success on appeal.

[71] It is my view that the threshold for section 17(1)(a)(i) of Act 10 of 2013 was not met.

[72] There are also no compelling reasons why an appeal should be heard as contemplated by section 17(1)(a)(ii) of the Act. The application for leave to appeal does not raise any significant questions of law or issues of public importance that may have a bearing on future disputes.

[73] There is also no reason for me to consider a different cost order apart from stating that costs follow the result.

Order

[1] The application for leave to appeal the summary judgment is dismissed on an attorney and client scale as per the mortgage bond.

**S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Appellant: In person

For the First Respondent: Adv Nkosi instructed by
SBM ATTORNEYS

For the Second Respondent: No appearance