

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case no: 1962/2012

In the matter between:

ROAD ACCIDENT FUND

APPLICANT

and

MAGDALENA KARSTEN

FIRST RESPONDENT

WILLOW-JEAN BERNADETTE KARSTEN

SECOND RESPONDENT

POSTNET SOUTHERN AFRICA (PTY) LTD

THIRD RESPONDENT

THE SOUTH AFRICAN POST OFFICE SOC LTD

FOURTH RESPONDENT

Neutral citation: *Road Accident Fund v Karsten and Others* (Case no 1962/2012).

Coram: Tyuthuza AJ

Heard: 29 January 2025.

Delivered: 15 August 2025.

Summary: *Leave to appeal – Superior Courts Act 10 of 2013, section 17(1)(a)(i) and (ii) – Higher threshold – Appeal must have reasonable prospect of success or compelling reason to be heard – Neither established – Application dismissed with costs.*

ORDER

1. The application for leave to appeal against the judgment and order granted on 22 March 2024 is dismissed with costs.

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Tyuthuza AJ

INTRODUCTION

- [1] The applicant, the Road Accident Fund, seeks leave to appeal the whole of the judgment and order, including the order as to costs granted by myself on 22 March 2024 to the Full Court of this Division or, alternatively, the Supreme Court of Appeal.
- [2] The first defendant in the action ('Road Accident Fund') is the applicant in this application for leave to appeal, and the first and second plaintiffs are the first and second respondents herein and have opposed the application. For ease of reference, I shall refer to the first and second respondents collectively as just respondents in this judgment. The third and fourth respondents, which are the second and third defendants in the action, do not oppose this application.

- [3] I have considered the grounds upon which leave to appeal is sought and the parties' respective written submissions. I note that the applicant does not seek leave to appeal the judgment and order insofar as it relates to the third defendant ('The South African Post Office SOC Ltd'), wherein I suspended the proceedings as against the third defendant pending the finalisation of the business rescue proceedings against it and further ordered the first and second plaintiffs to pay the third defendant's costs for 25 January 2024. The leave to appeal application is therefore limited to the judgment and order relating to the special plea of prescription raised by the applicant.

LEGAL PRINCIPLES

- [4] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act 10 of 2013, which provides that:

"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;"

- [5] This application is premised on the ground that the appeal has a reasonable prospect of success.

- [6] It is trite that the test or threshold for leave to appeal is higher and more stringent now, and an applicant must show that they have a reasonable prospect of success in the appeal.¹ In *Chithi and Others; In re: Luhlwini*

¹ See *S v Van Wyk and Another* [2014] ZASCA 152; [2014] 4 All SA 708 (SCA); 2015 (1) SACR 584 (SCA) para 14; see also *Notshokovu v S* (157/15) [2016] ZASCA 112 (7 September 2016) para 2.

*Mchunu Community v Hancock and Others*², the Supreme Court of Appeal confirmed this and stated as follows: “The threshold for an application for leave to appeal is set out in s 17(1) of the Superior Courts Act, which provides that leave to appeal may only be given if the judge or judges are of the opinion that the appeal would have a reasonable prospect of success.”

- [7] Reflecting on section 17(1)(a) of the Superior Courts Act in *Mont Chevaux Trust v Goosen*³, Bertelsmann J observed as follows:

“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, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. 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.”

It has also been held that it is incumbent upon the applicant for leave to appeal to convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. Thus, 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.⁴

- [8] Thus, to succeed with the application for leave to appeal based on the evidence led at trial, the applicant must convince this Court, on proper grounds, that there is a reasonable probability that another court would

² [2021] ZASCA 123 (23 September 2021) para 10.

³ [2014] ZALCC 18; 2014 JDR 2325 (LCC) para 6.

⁴ *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 (25 November 2016) para 17; *Four Wheel Drive Accessory Distributors CC v Rattan NO* [2018] ZASCA 124; 2019 (3) SA 451 (SCA) para 34; see also *S v Smith* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) para 7.

come to a different conclusion or that there is a compelling reason why it should be granted leave.⁵

- [9] In its analysis of the test for leave to appeal, the Court in *Smartpurse Solutions (Pty) Ltd (applicant for leave) v FirstRand Bank, In re: FirstRand Bank Ltd v Smart purse Solutions (Pty) Ltd*⁶, in respect of a reasonable prospect of success, stated as follows:

“Considered in the round, to establish a ‘reasonable prospect of success’ on appeal, the applicant must demonstrate that there exists some sound, cognisable reason why an appeal court would find differently to the court of first instance. In other words, there must be a reasonable possibility, not a certainty, of success on appeal. This possibility must exist (it must not be hopeless) and must be reasonable (based on logic).

For example, the applicant must show that there is some aspect of the reasoning in the judgment that has the potential to lead a different court to a different conclusion. There must be some factual finding or issue of law that the applicant can demonstrate might, as a matter of law, lead to a different conclusion or in other words, success on appeal.”

DISCUSSION

- [10] In summary, the applicant contends that I erred in the following respects:

10.1. By finding that there was compliance with section 24 of the Road Accident Fund Act⁷ and that the claim was lodged on 26 April 2011.

⁵ *Myeni v Organisation Undoing Tax Abuse and Another and a related matter* [2020] ZAGPPHC 779; [2021] JOL 49388 (GP) para 53.

⁶ [2024] ZAGPJHC 961; [2025] 1 All SA 552 (GJ) paras 67-68.

⁷ 56 of 1996.

- 10.2. By rejecting the applicant's evidence and argument that the claim was lodged on 28 April as per the Post Office date stamp.
- 10.3. By accepting Ms. Botes's version that she lodged the claim on 26 April 2011 at the Postnet Office, Midrand, and an employee completed the registered slips and therefore the claim did not prescribe.
- 10.4. By misunderstanding the evidence of the applicant's witness, in stating that Mr. Adams intimated that the applicant determines the date of lodgment of the claim, by looking at the date on which the sender posted the mail from the local post office. In fact, Mr. Adams intimated that the applicant determines the date of lodgment of claim by looking at the official stamp by the post office, which indicates the date the lodgment documents were received by the post office to be sent by registered post.
- 10.5. By misunderstanding the evidence of the applicant's witness, the Court intimated that the applicant determines the date of lodgment by considering the date on which the documents were received by the applicant. This was not the evidence presented by Mr. Adams.
- 10.6. By finding that, according to section 7 of the Interpretation Act 33 of 1957, the date that the respondents delivered the lodgment documents to Postnet is the date of lodgment by registered post. In fact, it is the date on which the Post Office received the lodgment documents from Postnet that is the date of lodgment by registered post.

10.7. By rejecting the applicant's argument based on the decision by the Constitutional Court in the matter of *Road Accident Fund and Another v Mdeyide*.⁸

[11] In essence, the whole appeal centres around the question whether I was correct in finding that the respondents lodged the claim by registered post on 26 April 2011 and thus it has not prescribed.

[12] Section 23(1) of the Road Accident Fund Act, which deals with the prescription of claims, states as follows:

"Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose."

[13] Section 24(1) of the Road Accident Fund Act prescribes the procedure for the lodgement of claims. It provides that the claim for compensation, together with the accompanying medical report under section 17(1) shall:

- "(a) be set out in the prescribed form, which shall be completed in all its particulars;
- (b) *be sent by registered post or delivered by hand to the Fund at its principal, branch, or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of*

⁸ [2010] ZACC 18; 2011 (1) BCLR 1 (CC); 2011 (2) SA 26 (CC).

delivery by hand acknowledge receipt thereof and the date of such receipt in writing." (Emphasis added.)

- [14] It is common cause that the respondents lodged their claim via registered post, whether this was done prior to the expiry of the three-year period prescribed in terms of section 23(1) is the issue of contention.
- [15] In its written submissions, the applicant contends that there are reasonable prospects of success on appeal and that, upon the consideration of the evidence before the Court *a quo*, another court may find that the respondents' claim was sent by registered post on 28 April 2011 and not 26 April 2011.
- [16] The applicant further contends that the third respondent ('Postnet') does not offer the services of the registered post, and acted as agent of the first and second respondents to deliver to the Post Office documents to be sent to the applicant by registered post. Thus the Court ought to have found that the claim was sent by registered post when Postnet delivered it to the Post Office to be sent by registered post. Therefore, the claim was only launched on 28 April 2011, when the agent sent the claim by registered post and has thus prescribed, so argues the applicant.
- [17] The applicant referred the Court to an e-mail which is attached to its bundle of documents, which it filed on 9 September 2024 after the trial. This e-mail was not part of the evidence presented at trial. That notwithstanding, the applicant did not make an application for further evidence to be adduced at the hearing of this application.
- [18] It is trite in law that once a party has closed its case, it is not allowed to lead further evidence. The respondents in their written submissions raised the point that the e-mail was never introduced into evidence by either party, nor

was there an agreement between the parties that it would serve as evidence and further that it does not assist the applicant. The e-mail correspondence was not adduced and accepted as evidence at trial, and there was no application to adduce further evidence by the applicant, in the circumstances, I will not consider the content thereof, which should have been adduced at the trial.

- [19] In *Commercial Union Assurance Company of South Africa, Ltd v Clarke*,⁹ where the Court dealt with section 11(2) of the Motor Vehicle Insurance Act 29 of 1942, which stipulated that no claim would be enforceable by legal proceedings before the expiry of a period of 60 days as from the date on which the claim was sent to the registered company; the Court held that the word "sent" refers to the date on which the documents are dispatched by post.
- [20] The respondents lodged the claim on 26 April 2011 by registered post and were provided proof of posting thereof. The registered post slip, which the respondents relied upon, indicates that the claim was accepted and signed on 26 April 2011 by an official of Postnet. The evidence of Ms. Botes, wherein she confirmed to have personally attended to the Postnet Offices on 26 April 2011 to hand in the documents and having received a registered post slip, which was appended by the signature of the official, was uncontested.
- [21] I am of the view that the proof of posting by registered post is the registered slip received by Ms. Botes on 26 April 2011, and the same evidences that the claim was lodged on 26 April 2011. The fact that the Post Office only sent the documents to the applicant on 28 April 2011 is irrelevant.

⁹ 1972 (3) SA 508 (A) at 515G.

[22] When registered post is the mode of delivery, the dispatch of the registered item within the three-year period is all that the respondents needed to prove; the fact that the documents did not reach the applicant on 26 April 2011 is of no consequence. The fact that the respondents dispatched the documents on 26 April 20211 constitutes compliance with section 23 of the Road Accident Fund Act.

[23] Section 7 of the Interpretation Act, which deals with the “meaning of service by post”, states as follows:

“Where any law authorizes or requires any document to be served by post, whether the expression ‘serve’, or ‘give’, or ‘send’, or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a registered letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.” (Emphasis added.)

[24] Having regard to section 7 of the Interpretation Act, I am satisfied that the claim was validly lodged on 26 April 2011.

[25] In further evaluating the evidence, I find that the respondents complied with the provisions of section 24(1)(b) of the Road Accident Fund Act in that they sent a claim for compensation in terms of section 17 of the said Act to the applicant on 26 April 2011.

[26] Having regard to the above, I am satisfied that the appeal would neither have a reasonable prospect of success, nor that there is some other

compelling reason why the appeal should be heard.¹⁰ The application for leave to appeal therefore stands to be dismissed with costs.

[27] I therefore make the following order:

1. The application for leave to appeal against the judgment and order granted on 22 March 2024 is dismissed with costs.



T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For applicant:	Adv EM Baloyi Mere SC Adv EB Yawa
Instructed by:	State Attorney
For respondents:	Adv N Snellenburg SC
Instructed by:	Stiglitz Botes Attorneys

¹⁰ See *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* [2020] ZASCA 17; 2020 (5) SA 35 (SCA) para 2.