

REPUBLIC OF SOUTH AFRICA



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

CASE NO:081166/2023

DOH: 26 June 2025

DECIDED: 11 August 2025

- 1) REPORTABLE: NO
- 2) OF INTEREST TO OTHER JUDGES: NO
- 3) REVISED.

SIGNATURE

11 August 2025
DATE

In the matter between:

**CATERPILLAR FINANCIAL SERVICES
SOUTH AFRICA (PTY) LTD**

Applicant

And

ELEPHAN-TE TRADING (PTY) LTD

Respondent

ORDER

Order

1. The application for leave to appeal is refused.
2. The respondent must pay the applicant's costs on a scale between attorney and client.

JUDGMENT

Bam J

1. This is an application for leave to appeal the judgment and order of this court of 27 December 2024. For convenience, I refer to the parties as they were in the original application. In this regard, the applicant refers to Caterpillar FSSA and the respondent, to Elephan-te Trading (Pty) Ltd. The applicant opposes the application on various grounds. These include the respondent's failure to identify the test it has to meet for leave to appeal and consequently, the failure to meet the test.
2. The respondent's grounds of appeal are set out in its application for leave to appeal and may be summarised thus:
 - (i) The court erred in identifying the issue in dispute.
 - (ii) The issue in dispute was whether the applicant is entitled to the return of the goods, (identified as machines in the judgment) under the *rei vindictio* principle, and the interpretation of the instalment sale agreement, specifically clauses 10(b) to 10 (k).

- (iii) The Court erred in disregarding that the applicant had pleaded a valid defence of contractual *lien* and that such right had to be protected. This ground is repeated in ground 10.
- (iv) The court erred in disregarding the amounts paid by the respondents towards the instalment sale agreements. This ground is set out as two grounds as it raises the same point in respect of the two instalment sale agreements.
- (v) The court erred in finding that there are no formalities provided for termination of the contract when clause (k) of the contract makes provision as follows:

‘Should any breach of our obligations and rights under clause 10(b) to 10(k) we will approach the court of law and obtain a court order to permit us to exercise our rights.
- (vi) The court erred in finding that the cancellation or termination of a contract is not harmful and does not amount to self help. This ground is repeated 3 times.

The respondent concludes that it is in the interests of justice that the appeal be allowed as contemplated in Section 17(1) (a) and (ii) of the Act.

Relevant legal principles

3. Legislative provision for applications for leave to appeal appears in the Section 17 (1) (a) and (i) and (ii) of the Superior Courts Act¹. Our senior courts have also pronounced on the issue such that the legal principles governing applications for leave to appeal have become trite. Those principles may be summarised thus: An applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard². In the

¹ Act 10 of 2013.

² *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020), paragraph 2.

event the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Here too the merits remain vitally important and are often decisive³.

Respondent's grounds

4. I now deal with the respondent's grounds in turn.

- (i) *The court erred in identifying the issue in dispute.*
- (ii) *The issue in dispute was whether the applicant is entitled to the return of the goods, (identified as machines in the judgment) under the rei vindicatio principle, and the interpretation of the instalment sale agreement, specifically clauses 10(b) to 10 (k).*

5. I start with the first ground dealing with the court's failure to identify the issue between the parties. The respondent contends that the issue was not whether the applicant is entitled to cancel the contract without first obtaining a court order. The point has no merit. That this was indeed the issue is apparent from the respondent's answering affidavit, in paragraphs 18 and 23. Other than this only issue, the answering affidavit contained no defence against the applicant's case of *rei vindicatio*. There is no need to repeat what is set out in the judgment on this issue. There is no prospect that another court would come to a different conclusion.

6. As to the second point which suggests that the issue was whether the applicant is

³ *Ramakatsa and Others v African National Congress and Another* (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021).

entitled to the return of the goods relying on the *rei vindicatio* and the interpretation of the Master Agreement, in particular clauses 10 (b) and 10 (k). The judgment deals with this point and it concludes that the applicant is entitled to the return of the machines. It would be supererogatory to go over that discussion and the court's finding. There is no merit to this ground and no prospect that another court would come to a different conclusion.

(iii) the court erred in disregarding the defence of a lien;

(iv) The Court erred in disregarding that the amounts paid by the respondents towards the instalment sale agreements.

(v) The court erred in finding that there are no formalities provided for termination of the contract

7. As to the court having disregarded the defence of a lien, this was never the applicant's case. Nothing further need be said about a lien.

8. As to the court having disregarded the amounts paid by the respondent towards the instalment agreements, it is not in dispute that the agreement requires the respondent to pay all, and not some of the instalments, which the respondent on its own version failed to do. In any event, the fact of having paid some instalments is not a defence against the applicant's claim of *rei vindicatio*. The judgment deals with what is required of an applicant to succeed on a claim based on the *rei vindicatio* and it concludes that the applicant in this case had met those requirements. The point lacks merit and there

is no prospect that another court would come to a different conclusion.

9. On the question of formalities and the allegation that the court erred in finding that there are no formalities, this was never an issue between the parties. The issue had always been whether the applicant required a court order to cancel the agreement. That question has been answered in the judgment. The respondent cannot re-litigate its case. The point has no merit and there is no prospect that another court would come to a different conclusion.

Conclusion

10. Based on all the reasoning set out in this judgment, leave to appeal must be refused.

Order

1. The application for leave to appeal is refused.
2. The respondent must pay the applicant's costs on a scale between attorney and client.



N.N BAM (Ms)
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Date of Hearing:

26 June 2025

Date of Judgment:

11 August 2025

Appearances:**Counsel for the Applicant:**

Instructed by:

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Werksmans Attorneys

c/o Serfontein, Viljoen & Swart

Attorneys

Brooklyn, Pretoria

Counsel for the Respondent:

Instructed by:

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