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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: **13728/2018P**

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

PLAINTIFF

and

GERRIT PIETER BEZUIDENHOUT

FIRST DEFENDANT

(Identity No: 8[...])

RUTH MARINA BEZUIDENHOUT

SECOND DEFENDANT

(Identity No: 6[...])

Coram: MOSSOP J

Heard: 17 September 2025

Delivered: 17 September 2025

ORDER

The following order is granted:

1. It is declared that the defendants' application for leave to appeal the order of this court dated 22 February 2023 is dismissed.

2. The defendants shall pay the plaintiff's costs on the attorney and client scale, jointly and severally, the one paying the other to be absolved.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex-tempore judgment.

[2] In this judgment, I shall refer to the parties as they were mentioned in the action which previously served before me, and which led to the order in respect of which the defendants seek leave to appeal.

[3] In bringing this application, the plaintiff seeks an order that the defendants' application for leave to appeal be dismissed with costs. Why it has been necessary for this application to be brought at all will become apparent from this judgment.

[4] Before proceeding further, I record that the defendants appear in person and without the benefit of legal representation. I have accordingly attempted to explain in understandable terms the procedures of this court and the applicable principles attaching to this matter and I have granted them the freedom to ask questions of the court that I might not have permitted of counsel.

Background

[5] On 22 February 2023, I granted judgment by default against the defendants for the following relief:

'1. Judgment by default is granted against the defendants, jointly and severely, the one paying the other to be absolved for:

1.1 Payment of the sum of R1,995,241.66.

1.2 Payment of the monthly insurance premium of R1143.56 from the 02 February 2023 to date of payment, both dates inclusive.

1.3 Interest on the sums in paragraphs 1.1 and 1.2 above at the rate of 10.75% per annum, as from the 02 February 2023 to date of payment, both dates inclusive.

2. The immovable property described as:

‘ERF 3[...], RICHARDS BAY (EXTENSION 14), REGISTRATION DIVISION GV, PROVINCE OF KWAZULU NATAL, IN EXTENT 1457 (ONE THOUSAND FOUR HUNDRED AND FIFTY SEVEN) SQUARE METRES, HELD BY DEED OF TRANSFER NUMBER T2[...], SUBJECT TO THE CONDITIONS THEREIN CONTAINED be and is hereby declared specially executable.

3. The sale in execution of the immovable property described in paragraph 2 above is subject to the reserve price of R1 319 000.00.

4. The defendants are to pay the costs of the suit on an attorney and client scale, jointly and severally, the one paying the other to be absolved.’ (The order)

[6] As a consequence of the order, the plaintiff caused a writ of execution to be issued in respect of the immovable property that had been declared specially executable (the property). A sale in execution in respect of the property was set up for 17 August 2023 and was properly advertised.

[7] On 7 August 2023, the defendants delivered an application for leave to appeal. I was initially unaware of its delivery but was belatedly informed thereof and, upon learning of it, I arranged for the application for leave to appeal to be heard on 4 September 2023 at 09h00.

[8] The application, however, was not heard on that date at that time because the parties had, in the interim, entered into an arrangement. The arrangement was recorded in a written settlement agreement (the settlement agreement).

The settlement agreement

[9] The settlement agreement, signed on 15 August 2023, recorded that the defendants:

‘... acknowledge and agree that they are, as at 15 August 2023, liable to the Plaintiff for payment of the balance outstanding of R2,128,741.60 together with additional interest thereon at the rate of 11.750% per annum from 15 August 2023, to date of final payment.’

[10] The defendants also acknowledged that they were:

‘... in agreement with the Court Order granted on the 22 February 2023 as per paragraph 2 above.’

[11] The settlement agreement further provided that the defendants would be given time to sell the property through a programme run by the plaintiff called ‘Easysell’ (Easysell). The defendants, however, acknowledged that if they breached the provisions of the settlement agreement, the plaintiff would be entitled to proceed and put the property up for sale, subject to the reserve price ordered by this court.

Withdrawal of the application for leave to appeal

[12] Significantly, the settlement agreement required the defendants to withdraw their application for leave to appeal. The defendants assented to this and undertook to do so. This they then duly did in an email directed to my registrar on 23 August 2023, in which the first defendant stated the following:

‘I confirm that the Appellants hereby advise that we formally withdraw our Application for Leave to Appeal, by agreement with the attorneys for Standard Bank.’

Failure of the settlement agreement

[13] The settlement agreement subsequently failed. While the defendants agreed that the property should be sold, this could not be achieved because they had omitted to inform the plaintiff that they had installed a tenant in the property on a five year lease that still had three years of its life left to run. The property thus did not qualify for inclusion in the plaintiff’s ‘Easysell’ programme because, presumably, it would not be an easy sell with a tenant legally in residence at the property. The first defendant, who addressed the court on his and his wife’s behalf, acknowledged to me that he had not informed the plaintiff of his tenant, explaining that he did not realise that he should make that disclosure.

[14] The plaintiff thus arranged a new date for a sale in execution of the property, being 8 February 2024 (the second sale in execution). However, on 6 February 2024, the defendants filed a document entitled ‘Notice of Re-Instatement of Application for

Leave to Appeal' (the re-instatement application). As a consequence, the second sale in execution had to be cancelled.

[15] The first time that I became aware of the re-instatement application was when commencing preparation for this application the day before it was to be heard. At no stage prior to this was I aware of its existence.

The plaintiff's submissions

[16] The plaintiff asserts that since the delivery of the re-instatement application on 6 February 2024, the defendants have failed to act in accordance with the provisions of Uniform Rules 49(6) and (7) respectively and that the re-instatement application is woefully late and condonation for this lateness has not been sought.

[17] Before launching this application, the plaintiff's attorneys wrote to the defendants and requested them to set down their application for leave to appeal. Their request went unheeded. Nineteen months have passed since the defendants delivered the re-instatement application and it has not been advanced an inch. The defendants assert that this was the court's fault for it did not arrange for the hearing that was required. The court could not have done so for the simple reason that it was not aware of the re-consideration application.

[18] Ms Ngcobo, who appears for the plaintiff, advised the court this morning that the defendants have not made any payments in respect of the loan that permitted them to acquire the property for a period of eight years and the arrears owed by them are now in excess of R1 million. I was not aware of this fact, but the first defendant admitted this morning that this was correct.

[19] The plaintiff contends that the application for leave to appeal has lapsed yet, strangely, then asks for it to be dismissed so that the legal consequences that follow upon a judgment being granted can be pursued by the plaintiff's attorneys. I am uncertain how something that has lapsed, and therefore does not exist, can be dismissed. Be that as it may, frustrated by the defendants' inactivity and unwillingness to advance its own application, the plaintiff felt compelled to bring this application.

The defendants' submissions

[20] The defendants delivered an affidavit in support of their re-instatement application. In it, they indicated that the plaintiff had informed them that they no longer wished to proceed with the arranged sale of the property through the 'Easysell' programme and further informed them that the property would consequently have to be sold at a sale in execution. The defendants apparently found this to be highly prejudicial to them and stated the following:

'I take umbraged (sic) with this and state that the Leave to Appeal ought to be heard under the circumstances as myself and my wife are prejudiced and on a balance of convenience I state that it favours us as opposed to the bank and that the Leave to Appeal be reinstated so that our rights as contained therein be aired before the Honourable Court.'

The defendants make no mention whatsoever of the tenant occupying the property which thwarted its inclusion in the Easysell programme. Not only did they not understand that they should tell the plaintiff of the existence of the lease agreement, as already mentioned, but appears that they did not recognise that they should tell the court this either.

[21] The defendants have delivered an answering affidavit in this application, to which the plaintiff has replied. In the answering affidavit, the defendants raise a point in limine, namely that the plaintiff ought to have proceeded in terms of Uniform Rule 30 and not in the manner that it has. Uniform Rule 30 deals with irregular proceedings. The provisions of the rule are not peremptory and consequently a litigant is not obliged to proceed in terms of it if it has another remedy available to it.¹ As was stated in *KDL Motorcycles (Pty) Ltd v Pretorius Motors*,² where a defendant insisted that a plaintiff should have invoked Uniform Rule 30 instead of the procedure that it did invoke:

'It seems to me an extraordinary position that a defendant who intends to defend an action but has failed to enter an appearance to defend should, notwithstanding such default which in terms of rule 31(2)(a) enables the plaintiff as of right to ask for judgment by default, be privileged to place an obstacle in plaintiff's way and burden him with a new and additional application in terms of Rule 30 in order to remove it before he can enforce his *prima facie* right. Rule 31 does not qualify the plaintiff's right in such a way and no other rule of court provides explicitly in the circumstances for such a course to be taken. Moreover, the unnecessary time wasted and the costs of multiplying applications and postponements in this way might not be conducive to the administration of justice even if the plaintiff involved is well-to-do. If he is not,

¹ *Stockdale Motors Ltd v Mostert* 1958 (1) SA 270 (O).

² *KDL Motorcycles (Pty) Ltd v Pretorius Motors* 1972 (1) SA 505 (O) at 508G-H.

the effect on him might be appalling and the speedy remedy of judgment by default might prove useless.’

[22] The point in limine is entirely misplaced, in my view, and devoid of merit.

[23] An attempt is also made in the answering affidavit to challenge the authority of the deponent to the plaintiff’s founding affidavit. This was a futile exercise in the absence of a challenge in terms of Uniform Rule 7, which is the proper remedy that the defendants ought to have adopted if this was an angle that they seriously wished to pursue.³ I make this comment alive to the fact that the defendants do not have legal representation and are acting for themselves. Unfortunately, the law is the same for all parties who come before it, whether represented or not.

[24] Finally, the defendants state that the matter, which was set down for 10 September 2025, could not proceed on that date because the plaintiff would still need to reply to their answering affidavit and the matter would then need to be set down on the opposed roll. That, at least, was correct. The matter was, indeed, on the unopposed roll on 10 September 2025 and before me by arrangement with my brother Olsen J who was first faced with the plaintiff’s application. The defendants did not attend court on 10 September 2025, and, in their absence, I directed that the matter would be heard by me one week later, on 17 September 2025. The plaintiff was directed to deliver its replying affidavit by 15 September 2025. I directed, further, that a notice of set down be served upon the defendants indicating to them that the matter would be heard on 17 September 2025. That notice was duly served on the defendants by email on 11 September 2025 and the covering letter that accompanied it specifically drew to the defendants’ attention the fact that the matter would commence at 09h00 on that date.

[25] Having heard from counsel and the defendants, I stood the matter down to reflect on my decision.

Analysis

³ *ANC Umvoti Council Caucus and Others v Umvoti Municipality* 2010 (3) SA 31 (KZP) para 28.

[26] I must first observe that the first defendant was distressed by the proceedings and was emotional. It appears to me that he and the second defendant have experienced some challenging times that have led to the seemingly insurmountable financial predicament in which they find themselves and which they are forced to now confront. The court has sympathy for their position and derives no pleasure from coming to the decision that it has reached.

[27] I next deal with the plaintiff's allegations that there has been non-compliance by the defendants with Uniform Rules 49(6) and (7). I am afraid that the plaintiff has got this entirely wrong. Those rules relate to a situation where leave to appeal has already been granted and do not apply to an application for leave to appeal. The point is accordingly ill-conceived.

[28] But the plaintiff does make a valid point when it submits that the defendants initially delivered their application for leave to appeal well out of time. Uniform Rule 49(1)(b) provides that such leave should be sought within 15 days of the granting of the order against which the appeal is directed. My order was handed down on 22 February 2023. The application for leave to appeal was delivered on 7 August 2023, and was, thus, delivered approximately four months late. I do not know why that is the case for no explanation has been advanced by the defendants. That is somewhat problematic for them. That problem was magnified by the fact that, just over two weeks after delivering their notice of intention to seek leave to appeal, they withdrew it.

[29] The reason for the magnification of the defendant's difficulties exists in the principle of peremption. According to the common law doctrine of peremption, a party who acquiesces in a judgment cannot subsequently seek to challenge the judgment to which he or she has acquiesced. This doctrine is founded on the logic that no person may be allowed to opportunistically endorse two conflicting positions. Thus, one cannot decide not to appeal and then later decide to appeal.

[30] In fact, the doctrine of peremption has its very origin in appeals.⁴ It was enunciated in *Hlatshwayo v Mare and Deas*,⁵ where Lord De Villiers CJ held that: 'Where a man has two courses open to him and he unequivocally takes one he cannot afterwards turn back and take the other.'

[31] Innes CJ in *Dabner v South African Railways and Harbours*,⁶ observed that: 'The rule with regard to peremption is well settled, and has been enunciated on several occasions by this Court. If the conduct of an unsuccessful litigant is such as to point indubitably and necessarily to the conclusion that he does not intend to attack the judgment, then he is held to have acquiesced in it. But the conduct relied upon must be unequivocal and must be inconsistent with any intention to appeal. And the onus of establishing that position is upon the party alleging it. In doubtful cases acquiescence, like waiver, must be held non-proven.'

[32] In *Tswelopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality*,⁷ the Supreme Court of Appeal dealt with whether an appeal had been perempted. Cameron JA held that:

'Peremption of the right to challenge a judicial decision occurs when the losing litigant acquiesces in an adverse judgment. But before this can happen, the Court must be satisfied that the loser has acquiesced unequivocally in the judgment. The losing party's conduct must "point indubitably and necessarily to the conclusion that he does not intend to attack the judgment": so the conduct relied on must be "unequivocal and must be inconsistent with any intention to appeal"...'

[33] In *Venmop 275 (Pty) Ltd and Another v Cleverlad Projects (Pty) Ltd*,⁸ the court stated that the enquiry into whether peremption has been established does not involve an enquiry into the subjective state of mind of the person alleged to have acquiesced in the judgment but rather involves a consideration of the objective conduct of such person and the conclusion to be drawn therefrom.

⁴ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and others (Council for the Advancement of the South African Constitution and another as amici curiae)* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 101.

⁵ *Hlatshwayo v Mare and Deas* 1912 AD 242 at 249.

⁶ *Dabner v South African Railways and Harbours* 1920 AD 583 at 594.

⁷ *Tswelopele Non-Profit Organisation and others v City of Tshwane Metropolitan Municipality and others* [2007] ZASCA 70; 2007 (6) SA 511 (SCA) para 10.

⁸ *Venmop 275 (Pty) Ltd and Another v Cleverlad Projects (Pty) Ltd and another* 2016 (1) SA 78 (GJ) para 25.

[34] The objective conduct of the defendants is, in my view, absolutely clear, unequivocal and not subject to any possible doubt. They voluntarily and jointly recorded in writing that they admitted their indebtedness to the plaintiff in a sum in excess of R2 million. They also stated that they agreed with the judgment that I delivered, and which they now seek leave to appeal against. They, finally, then recorded that they would withdraw their application for leave to appeal, and, in accordance with that undertaking, they did just that. In my view, a clearer case of peremption would be difficult to find.

[35] I must therefore conclude that on those undisputed facts, the defendant's knowingly, and unalterably, chose not to pursue an appeal. The decision to adopt this course of conduct was taken because, as the defendants themselves acknowledged, they did not dispute the order granted against them. Having acknowledged this, there is very little room, if any, for the defendants to argue that another court might come to a different decision if they were granted leave to appeal. The fact that matters thereafter did not turn out as they expected does not give them an opportunity to retrace their steps and make a new election. The law cherishes finality in proceedings and to permit endless backtracking on decisions properly and knowingly made would offend against this principle.⁹

[36] In the view that I take of the matter, the defendants have preempted their entitlement to appeal.

Conclusion

[37] The plaintiff is consequently entitled to an order dismissing the defendants' application for leave to appeal. It follows that it is unavoidable that the plaintiff must be granted its costs. Those costs must, in the exercise of my discretion and in terms of clause 8 of the settlement agreement, be paid by the defendants on the attorney and client scale.

The order

⁹ The principle of the finality of litigation is expressed in the maxim *interest rei publicae ut sit finis litium* (it is in the public interest that litigation be brought to finality).

[38] I accordingly grant the following order:

1. It is declared that the defendants' application for leave to appeal the order of this court dated 22 February 2023 is dismissed.
2. The defendants shall pay the plaintiff's costs on the attorney and client scale, jointly and severally, the one paying the other to be absolved.

MOSSOP J

APPEARANCES

Counsel for the plaintiff:

Ms T Ngcobo

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Counsel for the defendants:

Both in person