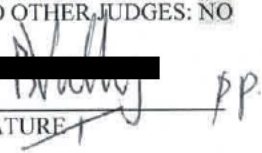


REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
09 Sep 2025	
DATE	SIGNATURE

In the matter between:

Case no: 2023-097422

MASHUDU MALDINI RAPFUMBEDZANI

APPLICANT

And

LANDROVER FINANCIAL SERVICES
A PRODUCT OF WESBANK, A DIVISION OF
FIRSTSTRAND BANK LIMITED

FIRST RESPONDENT

THE SHERIFF, KEMPTON PARK

SECOND RESPONDENT

J U D G M E N T: LEAVE TO APPEAL

MATYOLO AJ

Introduction

- [1] This is an application for leave to appeal against the judgment and order of the High Court delivered on 8 April 2025. The application is opposed by first respondent.
- [2] The grounds upon which the applicants rely on for their application for leave to appeal are set out fully in the application for leave to appeal. In essence, the applicant contends that:
- [2.1] The Court erred in finding that the respondent complied with Rule 18(6) of the Rules of this Court.
- [2.2] The Court erred in ordering that the applicant should pay costs on an attorney-and-client scale
- [2.3] The Court erred in finding that the applicant did not raise a *bona fide* defence in the affidavit resisting summary judgment. The applicant raised the defence of reckless lending - an issue which arises from sections 80 and 81 of the National Credit Act 34 of 2005, as amended.
- [2.4] The Court erred in granting summary judgment when a question of law was in issue. Furthermore, the applicant submits that the notice of intention to amend the applicant's plea contained *bona fide* defences.

[2.5] The Court erred in not considering the defences raised in the intended amended plea. Instead, the Court proceeded to hear the summary judgment application

[2.6] The Court erred in dismissing the applicant's amendments to his plea as a step in procedure that necessitated deference of the hearing of the summary judgment application. It was submitted further that it is trite law that Rule 28 allows any party to amend its pleadings any time before judgment is granted.

[3] Before I deal with the grounds for leave to appeal, I wish to set out the applicable legal position in the determination of an application for leave to appeal.

[4] Principles governing applications for leave to appeal.

Applications for leave to appeal are governed by sections 16 and 17 of the Superior Courts Act, 10 of 2013. Section 17 provides as follows:

(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.

[5] In *Acting National Director of Public Prosecution & others v Democratic Alliance in Re: Democratic Alliance v National Director of Public Prosecutions & others*¹, Ledwaba DJP writing for the full court considered the test envisaged in section 17 of the Superior Courts Act, and held that:

[25] The threshold for granting leave to appeal against the 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 Conwright & others*². 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.

¹ Unreported, Gauteng Division, Pretoria, Case Number 19577/09 24 June 2016.

² 1985 (2) SA 342 (T) at 343H

- [6] In *S v Smith*³ the Supreme Court of Appeal held that the test of reasonable prospects of success postulates a dispassionate decision, based on facts and the law that a Court of appeal could reasonably arrive at a conclusion that is different from that of the trial Court.
- [7] Therefore, to succeed an appellant must convince the Court that proper grounds exist for succeeding in the appeal and those grounds are not remote. In other words, there must be a sound, rational basis for the conclusion that there are prospects of success.

Submissions before this Court

- [8] The submissions on behalf of the applicant were that:

[8.1] Summary Judgment should not have been granted because the defences that were raised in the intended amended plea dealt with issues of law

[8.2] Rule 18(6) requires that where the issue between the parties arises out of a written contract, the said contract ought to be attached and that the person that represented the respondent must be mentioned. In this matter, so the submission went, the representative of the respondent was not mentioned.

³ 2010 (1) SACR 576 (SCA)

- [8.3] It was furthermore submitted that because of the allegation that there was no compliance with Rule 18(6), there was no meeting of the minds between the contracting parties.
- [8.4] It was also submitted that if the respondent sought to submit that the defence of reckless landing was not properly raised, the respondent ought to have resorted to the provisions of Rule 30 and or the respondent ought to have filed a replication.
- [9] As earlier indicated the application for leave to appeal is opposed by the respondent. In its opposition the respondent submitted *inter alia* as follows:
- [9.1] The applicant's plea dealt with the agreement between the parties and the applicant did not raise any issues regarding non-compliance with Rule 18(6) and did not raise any issues regarding the identity of the respondent's representative in the conclusion of the contract.
- [9.2] The respondent complied with the provisions of section 18(6) of the Rules as can be seen in paragraphs 3 to 4 of the particulars of claim. With regard the issue of signature by the respondent, it is trite, so the argument went, that electronic signatures are valid signatures.
- [9.3] This Court was also referred to the decision *Nedbank v Shoko*⁴ where the Court stated that in considering the defence of reckless

⁴ Nedbank Limited v Shoko, unreported judgment of Gauteng Division, Pretoria, case no 32115/21 (22 January 2024).

lending the Court must consider that it was Mr Shoko who provided Nedbank with the information on which Nedbank decided as to whether he qualified for credit or not. The Court in that matter found that Mr Shoko did not disclose any facts supporting the reckless lending. The court concluded that bald allegations of reckless landing have no merit and will not be considered to constitute a *bona fide* defence.

- [10] Similarly, this Court found that the respondent has not provided any facts in support of the alleged reckless lending. There are no cogent reasons for seeking to keep the vehicle in circumstances where the respondent has failed to make any payments.
- [11] With regard to the notice of amendment of the plea. The plea has not changed in any material respect and at the time of the filing of the plea, the contents of the amendments were known to the respondent, who is an Attorney. The only conclusion is that the amendment was only designed to delay the finalisation of this matter. I find that the attempted amendment is an abuse of the Court process and is only an attempt to further delay the finalisation of this matter.
- [12] I have also considered the fact that this matter does not raise any novel points of law that need to be dealt with on appeal. In this regard, I am also not persuaded that there are reasonable prospects that the factual matrix in this case may receive a different treatment on appeal.
- [13] Accordingly, the application for leave to appeal is dismissed with costs.

PP

**X MATYOLO****ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant:

Adv HR Liphosa instructed by
Rapfumbedzani AttorneysFor the 1st Respondent:Adv KM Boshomane instructed by
Rossouws, Lesse Inc

Date of hearing:

15 August 2025

Date of judgment:

09 September 2025