

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: **15 September 2025** Signature: 

Case no. **2020/27703**

In the matter between:

UMNOTHOWETHU TRADING ENTERPRISE CC

APPLICANT

And

SKYNET WAREHOUSING (PTY) LTD

RESPONDENT

Coram: **Dlamini J**

Date of hearing: 4 September 2025

Delivered: 15 September 2025 – This judgment was handed down electronically by circulation to the parties' representatives via

email, by being uploaded to *CaseLines*, and by release to SAFLII.
The date and time for hand-down is deemed to be 10:30 on 2025
15 September 2025.

JUDGMENT

DLAMINI J

Introduction

- [1] This is an application for leave to appeal the judgment and order that I handed down on 23 June 2025.

- [2] The plaintiff's (respondent) claim against the defendant (applicant) is essentially a claim for specific performance based on a written warehousing and distribution agreement entered into between the parties. The plaintiff had contended that it had performed its obligations in full and was therefore entitled to payment. The plaintiff claimed that it had complied with its obligations and had delivered in accordance with the agreement. The plaintiff claimed that the defendant had breached the agreement by refusing to pay the plaintiff's invoices.

- [3] The applicant defendant the matter and denied that it was liable to the respondent and instead counterclaimed.

- [4] Having heard the matter, I found in favour of the plaintiff. The defendant, aggrieved by this decision, launched this application for leave to appeal. The applicant contends that this court erred and is therefore seeking leave to appeal against my entire order and judgment.

- [5] This application for leave to appeal is opposed by the respondent.

Grounds of Appeal

- [6] The applicant's grounds of appeal, the parties' heads of argument, and this Court's judgment, including the entire record of appeal, must be deemed to be incorporated in this judgment.

Test for Leave to Appeal

- [7] The test for leave to appeal is set out in Section 17 of the Superior Court Act, which provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that; –

7.1. *The appeal would have reasonable prospects of success; or*

7.2. *There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.*

Analysis

- [8] Generally, meritless appeals are not allowed. In ***Mothuloe Incorporated Attorneys v Law Society of the Northern Provinces and Another***.¹ The Court had this to say in this regard;

"[18]... therefore it would be advisable, when dealing with an application for leave to appeal, to look at the enabling statute to find guidance. It is important to mention my dissatisfaction with the court a quo's granting of the leave to appeal to this court. The test is simply whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or a mere possibility of success..."

¹ (213/16) [2017] ZASCA 17 (22 March 2017).

*.... This court has in the past bemoaned the regularity with which leave is granted to this court in respect of matters not deserving its attention. (See **Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC & Others**, 203(5) SA 354 (SCA) para 23). This is one case where leave to appeal should have been refused for lack of reasonable prospects of success."*

[9] This simply illustrates that a court may not grant leave to appeal where the threshold that warrants such leave has not been met by the applicant.

[10] The appellant's plea, which is encapsulated in the appellant's heads of argument, is as follows: -

"the defendant admits the conclusion of the agreement and that the plaintiff, initially, complied with the terms and conditions thereof. However, the defendant alleges that the plaintiff subsequently breached the agreement, denies that the plaintiff has complied with its obligations, denies any indebtedness to the plaintiff, and counterclaims based on the plaintiff's locking of the ware house premises and refusing the defendant access thereto and its goods that were stored thereat, as well as a breach by the plaintiff's obligations". My underlying. This summarizes the appellant's plea and counterclaim. Thus, the issues that stood to be determined in the trial.

[11] During argument on appeal, the appellant confirmed that it was now abandoning its counterclaim. Insofar as the appellant's plea and the rest of the grounds of appeal are concerned, I am satisfied that I have dealt extensively with all the appellant's submissions in my judgment, and I found them to be meritless and dismissed them. Thus, it will serve no purpose for me to repeat my reasons herein.

[12] I have duly considered the applicant's grounds of appeal and the submissions made by both the applicant and the respondent in this application for leave to appeal. My finding is that the applicant has failed to demonstrate that another court would reach a different decision and that the applicant should be granted leave to appeal.

- [13] Having regard to the provisions of Section 17 and the factual matrix of this matter, I am not persuaded that there are any reasons or extraordinary circumstances that warrant the grant of leave to appeal, which would have reasonable prospects of success. There are no compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [14] In light of all the circumstances alluded to above, it is my view that the applicant has not presented any facts that demonstrate that it has any prospects of success; therefore, it would not serve the interest of justice to grant leave to appeal to the applicant.

Costs

- [15] The trite principle of our law is that costs follow the results and are awarded to the successful party.
- [16] The respondent argues that this court ought to have dismissed the plaintiff's claim and ordered it to pay the defendant's costs on the attorney and client scale B or C. That this court erred in granting costs on Scale C. The applicant furnishes no reasons for this proposition. Considering the nature of the issues and the quantum involved in this matter, it is my view that costs should be awarded in accordance with scale C.
- [17] I make the following order.

ORDER.

1. The applicant's application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, consisting of a stylized 'J' and 'D' followed by a flourish, is written over a black rectangular redaction box.

J DLAMINI
Judge of the High Court
Gauteng Division, Johannesburg

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