



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
13 AUGUST 2025	
.....	
DATE	SIGNATURE

Case no: 52965/2018

In the matter between:

FIRSTRAND BANK LIMITED T/A WESBANK

APPLICANT

AND

MNTUKABONI MPUNGOSE

RESPONDENT

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

Mazibuko AJ

- [1] The applicant seeks leave to appeal to the Supreme Court of Appeal, alternatively, the Full Court against the whole judgment and the order of this court delivered on 4 June 2025, granting absolution from the instance.
- [2] Concerning the application for absolution from the instance, in May 2017, the respondent attended a dealership to purchase himself a BMW X5 M50D,

engine number [...] and chassis number [...] ('the BMW X5') by entering into a manual instalment sale agreement. It was alleged that on the same day, he also entered into an electronic instalment sale agreement (the agreement) with the applicant, purchasing a 2015 Jaguar XJ 5.0 VB S/C Supersport LWB with engine number [...] and chassis number [...] (the Jaguar) that was allegedly sold for just above R2.7 million to the respondent.

- [3] It was alleged that the respondent breached the agreement regarding the Jaguar by failing to make due monthly instalments in terms of the agreement. The Jaguar was subsequently sold on auction by agreement between the parties. The plaintiff instituted an action against the respondent for damages emanating from the difference between the outstanding balance owed on the Jaguar and its sale value. The trial served before the court. The court absolved the respondent from the instance at the close of the applicant's case. Now the applicant has lodged an application for leave to appeal. The application is opposed.
- [4] This court does not propose to set out the exhaustive grounds of appeal again or repeat that which is set out in the judgment, since that which was relevant was dealt with in the judgment.
- [5] The grounds for leave to appeal have been fully ventilated in the applicant's heads of argument. They are submissions and contentions about how this court should have exercised its discretion by not granting the application for absolution from the instance after the closure of the applicant's case, in that the court ought to have let the trial proceed.
- [6] In summation, the following are the grounds of the bout on the judgment in that:
- [6.1] The fact that the respondent pleaded in the alternative that there was some fraud perpetuated against him. The evidence as a whole showed that the respondent was fully conversant in English and understood contracts. The court ought to have found that the defence of fraud played no role in determining the issue of absolution from the instance.

- [6.2] The court erred in finding that Mr. Khotsamotladi's testimony, that at the time of the agreement the applicant did not have or utilised the Debicheck system but that the agreements were entered into via a One Time password (OTP), as a ground to find that no contract was entered into. The use of an OTP and or use of the term "Debicheck" are not mutually exclusive and form part of the same electronic verification process.
- [6.3] There was no evidence presented, as the respondent had not yet testified, that showed that the respondent did not pay the deposit. The respondent can nominate any entity and or person to make payment on its behalf, and this needs to be dealt with under cross-examination of the respondent.
- [7] The applicant submitted that there are reasonable prospects that another court would come to a different finding. Reliance was placed on the matter of Spring Forest Trading 599 CC v Wilberry (Pty) Ltd t/a Ecowash & Another,¹ where the Supreme Court of Appeal confirmed that electronic communication and signatures can constitute valid agreements, and that representation need not be in person, especially where authentication measures (e.g. OTP, passwords) are in place.
- [8] The court was also referred to other case laws, including Schoeman v Firstrand Bank Limited,² where the court dealt with exception.
- [9] It was argued on behalf of the applicant that there is a compelling reason to grant leave to appeal as contemplated by section 17(1)(a)(ii) of the Superior Courts Act, Act 10 of 2013, since the facts are novel. The matter raises important points of law relating to the status of electronically concluded contracts and the evidence needed to prove the existence thereof in terms of ECTA.

¹ (725/13) [2014] ZASCA 178; 2015 (2) SA 118 (SCA) (21 November 2014).

² (43859/2021) [2024] ZAGPPHC 58 (25 January 2024).

- [10] The respondent filed no cross-appeal. It opposed the application and argued in favour of the judgment that the court's reasoning was fully set out in the judgment.
- [11] In *MEC for Health, Eastern Cape v Mkhitha and Another*³ (Mkhitha), the Supreme Court of Appeal, held that: *"An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. 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."*
- [12] Regarding the compelling circumstances as envisaged by Section 17(1)(a)(ii) of the Superior Courts Act. The applicant submitted that it was in the interest of justice that leave be granted as the facts are novel and bound to develop the law.
- [13] In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁴ (Caratco), it was held: *"A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here, too, the merits remain vitally important and are often decisive."*
- [14] Applying the tests in Mkhitha and Caratco, respectively, and assessing the merits of the applicant's case, including their grounds of appeal, the court could not find any ground or compelling factors necessitating the hearing of the applicant's appeal.
- [15] In my respectful view, the court judicially exercised its discretion in granting the absolution from the instance.

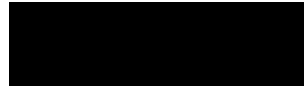
³ (1221/2015)(2016) ZASCA 176 (25 November 2016).

⁴ 2020 (5) SA 35 (SCA) para [2].

[16] Consequently, the application for leave to appeal cannot succeed. The following order is made:

Order

The application for leave to appeal is dismissed with costs.



N. Mazibuko

Acting Judge of the High Court of South Africa
Gauteng, Pretoria

This judgment is digitally submitted by uploading it onto Caselines and emailing it to the parties.

Representation

Counsel for the applicant: Advocate C J Welgemoed

Instructed by: Strauss Daly Incorporated

Counsel for respondent: Advocate P A Wilkins

Instructed by: Sarlie & Associates Incorporated

Date of hearing: 22 July 2025

Judgment delivered on: 13 August 2025