



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

Case No: 28602/2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
25 June 2025	
DATE	SIGNATURE

In the application for leave to appeal between:

WALTER GROBLER

APPLICANT

and

PILLAY DEEVIA

RESPONDENT

In re :

PILLAY DEEVIA

APPLICANT

and

WALTER GROBLER

RESPONDENT

JUDGMENT

NHARMURAVATE AJ

INTRODUCTION

- [1] This is an opposed leave to appeal filed by the Applicant who was the Respondent in the main application based on various grounds cited as per the notice filed.
- [2] The Respondent, who was the Applicant in the main application, opposes the leave sought on the grounds that it lacks a legal basis and should therefore be dismissed with costs.
- [3] For simplicity, the parties will be referenced as in the main application.

THE LEAVE SOUGHT

- [4] Section 17(1) of the Superior Courts Act, Act 10 of 2013 ("the Act"), regulates applications for leave to appeal. The Superior Court Act specifically section 17 has been amended and it currently reads as follows that:

'(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] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion. However, the amendment of section 17(1) has raised the

test, as Bertelsmann J, correctly pointed out in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para [6]:

'It is clear that the threshold for granting leave to appeal against a 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 Cornwright & Others 1985 (2) SA 342 (T) at 343H. 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.'

[6] The Applicant presented six grounds of appeal, summarized as follows:

- The error in concluding that the claim was not extinguished by prescription.
- The error in failing to consider that the Applicant did not file a replying affidavit as response to the answer.
- The error in the court's determination that the opposing papers were inadequately drafted.
- The liability of Edume Game Breeders CC.
- The court's failure to consider that none of the investors received payment.
- The fact that the answering affidavit remained unchallenged due to the absence of a reply.

[7] In assessing whether another court may reach a different conclusion, I noted that the Respondent's answering affidavit in the main application did not address any allegation made in the Applicant's founding papers. It is established law that the Respondent must address all material facts alleged in the founding affidavit. Alternatively, specify which facts are not admitted and to what extent and must clearly and concisely state all material facts upon which the Respondent relies.

[8] Mr. Vermaak, Counsel for the Respondent, did not provide this court with any authority permitting the answering affidavit filed in the main application to be drafted in such a manner. If the Respondent's answer to the Applicant's founding affidavit fails to admit or deny, or confess and avoid, allegations in the Applicant's

affidavit, the court will, for the purposes of the application, accept the Applicant's allegations as correct.

[9] Further, the Applicant's failure to file a replying affidavit, is discretionary as per rule 6(5)(e)¹. It is established law that the Applicant's case must be presented in the founding affidavit and cannot be established in the replying affidavit. The founding affidavit remains unchallenged by the Respondents. Mr Lazarus, representing the Applicant, correctly argued that the response did not address any allegations made in the founding papers.

[10] The defense claimed by the Respondent, suggesting the Applicant should have sued Edume game breeders, is flawed. The contract was between the Applicant and the Respondent, drafted by the Respondent. There was no provision in the contract directing as such. Further, the contract's language did not impose conditions based on other investors' payments. The Applicant's counsel, Mr. Lazarus, highlighted that the Respondent's defence lacked merit, as the contract explicitly delineated the responsibilities of the parties involved without provisions for external dependencies.

[11] The Respondent is not denying that he took and or received the Applicants R400 000.00. He did not plead that this money was a donation and it is not denied that repayment was expected by the Applicant at some stage. The Respondents sole defence is that of prescription. Prescription is interrupted when the debtor acknowledges the debt be it tacitly or expressly. The Applicants founding papers deposed as follows that *"the respondent is a family member of mine whom I requested to make payment to me in terms of the agreement on multiple occasions the respondent will promise to make payment to me only not to make payment to me in respect of the matter"*. (own emphasis)

[12] The aforementioned is not addressed in the Respondent's answer. This allegation points to an express acknowledgment of debt, which interrupts prescription. The Respondent's repeated promises to pay constituted an acknowledgment, effectively interrupting the prescription period every time he

¹ Superior Court Practice Erasmus

promised to pay prior 2020. The Respondent's did not attempt to counter these assertions, and the argument made was notably insufficient, failing to address the material allegations with clarity or substantive evidence.

[13] This information indicates that the matter may not have prescribed in April 2019 as argued by the Respondent. The onus was on the Respondent to respond to the Applicant's case and failure to do so can be interpreted as an admission of the allegation. Admission of this allegation simply means that the matter had not prescribed when the application was issued more so when the two loan repayments were made by the Respondent.

[14] The answering filed also supports the Applicants averment that he promised to pay. The Respondent in paragraph 3.18 of the answer deposes that:

"I did at one stage mention to her that I will attempt to pay her an amount of R100,000, subject there too that I receive payments sufficient money to do so I also had to take care of my family and my own".

[15] The terminology employed constitutes a clear acknowledgment of debt, although the precise timing of this acknowledgment is not specified. The Respondent did not indicate any intention to donate R100,000.00 to assist her. The usage of such terminology unequivocally signifies acknowledgment. Indeed, throughout the Respondent's response, the choice of words consistently used is to "pay" rather than "donate." The term "*pay*" is defined as to give money in exchange for goods, services or to discharge a debt².

[16] I believe that, despite not addressing the interruption of prescription before the two payments were made, another court is unlikely to reach a different conclusion. The standard for granting leave to appeal has been heightened. Consequently, the Respondent's request for leave to appeal must be denied.

² Oxford Dictionary

CONCLUSION

[17] I therefore make the following order :

1. Leave to appeal is dismissed with costs.



**NHARMURAVATE, AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the Applicant : Mr J Lazarus

Instructed by. : Shapiro and Ledwaba Attorneys

For the Respondent : Adv N Erasmus

Instructed by. : Van Der Cloete Inc

Date of Hearing :03 March 2025

Date of Judgment: 25 June 2025