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

Case No: **001484/2024**

(1) REPORTABLE: YES / **NO**

(2) OF INTEREST TO OTHER JUDGES: YES / **NO**

(3) REVISED: YES / **NO**

DATE 11 September 2025

SIGNATURE

In the matter between:

HENDRIK VOLSCHENK

(Identity No: 6[...])

Applicant

and

THE STANDARD BANK OF SOUTH AFRICA LTD

(Registration No: 1962/000738/06)

Respondent

In re;

THE STANDARD BANK OF SOUTH AFRICA LTD

(Registration No: 1962/000738/06)

Applicant/Plaintiff

and

HENDRIK VOLSCHENK

(Identity No: 6[...])

Respondent/Defendant

Coram: Groenewald, RJ (AJ)

Heard on: 10 September 2025

Delivered: 11 September 2025 - This judgment was handed down electronically by uploading to Caselines.

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

GROENEWALD AJ

[1.] This is an application seeking leave to appeal, in terms of Uniform Rule of Court 49(1)(b), against the judgment and order granted by this court on 1 August 2025. I shall refer to the parties as in the main proceedings.

[2.] Section 17(1) of the **Superior Courts Act**, 10 of 2013, provides as follows:

“17(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.”*

- [3.] The Supreme Court of Appeal held in ***Ramakatsa and Others v African National Congress and Another***¹ that:

*“Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice.[6] This Court in Caratco, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that ‘but here too the merits remain vitally important and are often decisive’. I am mindful of the decisions at high court level debating whether the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. **If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted.** The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”* (Own emphasis applied.)

- [4.] The Defendant contends that the court erred in granting summary judgment and in not finding that when the Defendant applied for credit, that the Plaintiff failed to conduct an assessment as required by section 80(1), read with section 81(2), of the National Credit Act, Act 34 of 2005 (“the NCA”).

¹ (724/2019) [2021] ZASCA 31 (31 March 2021) at para [10].

- [5.] This ground of appeal fails to take cognisance of the analysis contained in the written judgment in respect of both the documentation completed in applying for the loan, as well as the common cause facts in respect of the meeting between which occurred between the Defendant and the Plaintiff's representative when the application forms were completed.
- [6.] It is abundantly clear that the Plaintiff proceeded to do an assessment of the Defendant's financial position and that the information provided by the Defendant was such that it would not in any way suggest that:
- [6.1] The information provided was inaccurate; or
- [6.2] That it was necessary for the Plaintiff to second guess the information provided by the Defendant.
- [7] It was also conceded by counsel appearing for the Defendant that the information supplied and reflected in the application forms are correct and none of the information so provided would give rise to any suspicion by the Plaintiff that the Defendant was not being truthful. This concession was correctly made and aligns with the position adopted by the Defendant in its opposing affidavit and plea.
- [8.] It cannot be gainsaid that the steps taken as part of an assessment will depend on the facts of each case. In this regard, where there are facts indicating that it would be appropriate to take additional steps to ascertain a consumer's ability to, within the ambit of the NCA, repay a loan agreement then it may, under such circumstances, be appropriate for the credit provider to take such additional steps.

- [9.] However, it is not expected of a credit provider to approach with suspicion and distrust the information provided by a consumer. The Defendant ignores that in making the process of conducting a credit assessment more cumbersome and protracted, save within the reasonable confines of the NCA, it will necessarily have the impact of increasing the cost of credit. These are costs which will ultimately be trickled down to the consumer. The purpose of the NCA is to strike a balance and it is not designed to make it impossible to either obtain or grant credit.
- [10.] The Defendant advanced no primary facts which indicate that the Plaintiff would have any reason to take any additional steps to establish the veracity of the information provided by the Defendant or to obtain additional information. The application forms are comprehensive and seek extensive information which would enable the Plaintiff to assess the Defendant's financial position and to then decided whether further steps needed to be taken to expand on the assessment. The information provided by the Defendant indicated ample capacity to service the debt. There is therefore no merit in this ground of appeal.
- [11.] Based upon the analysis of the objective facts the court concluded in its judgment that the Plaintiff had taken reasonable steps to assess the Defendant's financial position and obligations. This was done before the loan was granted and the credit extended.
- [12.] It is not unimportant that the Defendant did not advance a single primary fact which would indicate, even remotely, that the Defendant failed to disclose any additional undisclosed financial obligations or any indication of an

adverse payment history. As such, the Defendant has premised its proposition upon mere speculation.

[13.] The Defendant also advanced that there was a duty upon the Plaintiff to verify the Defendant's repayment history under other credit agreements, which have not been identified [in fact the Defendant has not even said that there were any such other credit agreements], and to require the Defendant to provide a tax clearance certificate which "*could reasonably have been obtained without relying on the say-so of the*" of the Defendant prior to the conclusion of the Credit Agreement.

[14.] This proposition ignores that:

[14.1] First, the NCA does not require a credit provider to request a tax clearance certificate from a consumer.

[14.2] Second, it is not the Defendant's case in the papers that he had either failed to disclose any tax obligations, or even that he was not up to date with his responsibilities towards the Receiver of Revenue.

[15.] The Defendant therefore advances a proposition premised upon a hypothetical scenario, without any facts to suggest that the Defendant would not be able to obtain a tax clearance certificate or that the SARS would have provided any indication adverse to granting credit to the Defendant.

[16.] While it is not incumbent upon the Defendant to formulate his opposition to the summary judgment application with the precision that would be required of a plea (or for the court to examine the opposing affidavit by the standards of pleadings), none the less when he advances his contentions in resistance to the Plaintiff's claim he must do so (a) with a sufficient degree of clarity to

enable the court to ascertain whether he has deposed to a defence which, if proved at the trial, would constitute a good defence to the action;² and (b) with reference to the plea that was delivered.

[17.] The defendant must disclose fully the '*nature*' and the '*grounds*' of his defence and the '*material facts relied upon therefor*'.³ In this regard the defendant must engage meaningfully with the material in the plaintiff's affidavit supporting the application for summary judgment.⁴ The Defendant has failed to provide material facts which would give any tracking to the proposition that the Plaintiff should have done credit checks and should have insisted on a Tax Clearance Certificate.

[18.] Finally, the Defendant contends that the findings in the judgment amounts to a finding that a credit provider may ignore facts which could easily be obtained by either the credit provider or the consumer from an independent source in all those cases where the credit provider has reason to believe in the correctness of the information given to it by the consumer. This does not accord with the findings in the judgment.

[19.] Quite the opposite is true, in the present case the Plaintiff acted upon the facts presented by the Defendant. The Defendant has not recanted the veracity of those allegations, and it was conceded that the information provided was in fact correct. The Defendant also ignores the provisions of the NCA which provides expressly that a credit provider may rely upon the information provided by a consumer. In addition, the argument holds the

² *Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T).*

³ *Pangbourne Properties Ltd v Nitor Construction (Pty) Ltd and Others 1993 (4) SA 206 (W) at 217G.*

⁴ *Tumileng Trading CC v National Security and Fire (Pty) Ltd - 2020 (6) SA 624 (WCC) at par 24.*

inherent tension that a consumer would be entitled to use his own subterfuge in providing false facts or a deliberate failure to disclose relevant information, alternatively to present false information, to escape his own liability. Such a proposition flies in the face of the provisions of the NCA.

[20.] The analysis of the facts in the matter, as already elucidated upon in the judgment, leaves no doubt that the Plaintiff conducted a proper assessment and complied with the provisions of the NCA. The fact that the Defendant could not provide any primary facts whatsoever which would even remotely indicate that obtaining a Tax Clearance Certificate or, insofar as it is disputed that it was done, conducting further investigations in respect of the Defendant's repayment history would have indicated any adverse information, demonstrates that there is no merit in the bare defence raised by the Defendant.

[21.] Under those circumstances, there are no grounds whatsoever which would justify the granting of leave to an appeal.

[22.] I therefore find that the appeal would not have a reasonable prospect of success; and there is no compelling reason why leave to appeal should be granted.

[23.] There is no reason why costs should not follow the result.

The order:

[24.] The following order is made:

1. The application for leave to appeal is dismissed with costs, including costs of counsel on Scale B.

RJ GROENEWALD (AJ)
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for the hand-down is deemed to be 11 September 2025.

For the Plaintiff / Applicant	:	Adv M Rakgoale
Instructed by	:	Vezi & De Beer Incorporated
For the Defendant / Respondent	:	Adv AB Rossouw SC
Instructed by	:	M C Coetzer Attorneys Inc
Matter heard on	:	10 September 2025 – Virtually on MS Teams
Judgment date	:	11 September 2025