

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

**CASE NO: 2023/054703**

**HEARD: 17 SEPTEMBER 2025**

**DECIDED: 22 SEPTEMBER 2025**

1) REPORTABLE: NO

2) OF INTEREST TO OTHER JUDGES: NO

3) REVISED.

**DATE 22 September 2025**

**SIGNATURE**

In the matter between:

**BMW FINANCIAL SERVICES SOUTH AF-**

plicant

**RICA (PTY) LTD**

(In its capacity as cedent of the rights of Superdrive Investments (Pty) Ltd (RF))

Ap-

**And**

**JOHANNES MAHLATSE MAUNATLALA MARISHANE**

spondent

Re-

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on caselines. The date of hand down shall be deemed to be 22 September 2025.

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## ORDER

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1. The application for leave to appeal is dismissed with costs on a scale as between attorney and client.
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## JUDGMENT

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### BAM J

#### *Introduction*

1. This is an application for leave to appeal the judgment and order of this court of 1 March 2024. The application is brought by the respondent. In terms of the order, this court authorised, *inter alia*, cancellation of the instalment sale agreement between the parties; the attachment, seizure and handover the motor vehicle described as BMW 330i M Sport A/T (G20), Engine number F[...], with Chassis Number W[...] by the Sheriff of the High Court; and other ancillary relief. The reasons for the order were handed down on 12 May 2025. The delay in furnishing the reasons was due to a human error. The respondent's communication requesting reasons was never brought to the attention of this court. As may be apparent already, I refer to the parties as they were in the summary judgment application brought by BMW Financial Services South Africa, (BMW).

#### *Respondent's grounds of appeal*

2. The respondent contends that the court erred in the following respects:
  - (i) In not considering the merits and content of the appellant's opposing affidavit and annexures;

- (ii) In not considering the notices of amendment and that establishing the authority of legal representatives acting on behalf of the applicant, as provided for in Rule 7.
- (iii) In not noticing that the respondent had filed an application for condonation for the late filing of his opposing affidavit and in not ensuring the correct procedure had been followed by the applicant, BMW. The correct procedure, it is contended was for BMW to bring an application for contempt.
- (iv) In not applying the point of law applicable under the circumstances;
- (v) In not making an enquiry into whether the applicant complied with rule 32 in respect of the summary judgment; and
- (vi) In not providing the respondent enough opportunity to make out his case as per his opposing affidavit.

*Applicable legal principles*

3. Legislative provision is made in Section 17 (1) (a) of the Superior Act<sup>1</sup> for applications for leave to appeal. In the relevant parts, the section read:

‘(a) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (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;’

4. The standard an applicant for leave to appeal must meet has been espoused in many a case by the Supreme Court of Appeal. In particular, in *MEC for Health, Eastern Cape v Mkhitha and Another*, it was said 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

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<sup>1</sup> Act 10 of 2013.

not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’<sup>2</sup>

5. Where the court is not persuaded about the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal... ‘but here too the merits remain vitally important and are often decisive’ *Ramakatsa and Others v African National Congress and Another*<sup>3</sup>.

### *Analysis*

6. Perhaps prior to delving into the question whether there is any prospect of success for the respondent on appeal, based on his grounds, some background is necessary. On 23 June 2023, the applicant served a combined summons against the respondent with which it sought an order authorising it, *inter alia*, to recover certain outstanding monies in terms the instalment sale agreement that was existing at the time between the parties, cancellation of that agreement, and taking repossession of the vehicle. The arrears on the vehicle at that stage as set out in the particulars of claim were R 21 937<sup>4</sup>, and the total outstanding in terms of the instalment sale was said to be R 991 755.
7. The matter progressed to the stage where the applicant applied for summary judgment in 23 October 2023. On the day of the hearing, an order was issued by this Court, per Tshombe AJ, that the respondent file his answering papers to the summary judgment application within TEN (10) days from date of the order and further pay the applicant’s wasted costs. The application was then postponed to 1 March 2024. The court order was brought to the attention and notice of the respondent as far back as 30 October 2023.
8. On 1 March, at 10h16, while the court was in session, without seeking leave of the court, the respondent uploaded onto Caselines his answering affidavit

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<sup>2</sup> (1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 17.

<sup>3</sup> (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021), paragraph 10.

<sup>4</sup> The amounts do not include cents.

together with notices in terms of Rule 7 and in terms of Rule 28. As already mentioned in the reasons subsequently issued by this court, the answering affidavit did not raise any triable issues.

9. Back to the respondent's grounds, I have interrogated the respondent's grounds and conclude that there is simply no prospect that another court would come to a different decision. Two matters raised in the grounds remain to be answered. They are, the challenge that the court erred in not realising that there was an application for condonation, and the fact that the court erred in not affording the respondent the opportunity to make his case. I deal with the two in turn, beginning with the first one. The respondent never made any application for condonation. This is plain from his answering affidavit. He simply set out his understanding of the court order of 23 October 2023 and invited the court, in the event it required reasons for the delay in filing the answering affidavit, to make that make such requirement known to him. Under no circumstances can the two statements attributed to the respondent in this paragraph be regarded as an application for condonation.

10. The respondent claims he was not afforded an opportunity to make his case, as made in his answering affidavit. It is not clear what the respondent is aiming at with this ground statement. What is plain is that the respondent had more than four months to file his answering affidavit and set out his case. His belated answering affidavit, though irregularly uploaded onto Caselines while the court was in session, without an application for condonation, disclosed no defence to the applicant's claim. Under the circumstances, leave to appeal cannot be granted and the application stands to be dismissed with costs.

### *Order*

1. The application for leave to appeal is dismissed with costs on a scale as between attorney and client.

**N.N BAM J  
JUDGE OF THE HIGH COURT,  
GAUTENG DIVISION,  
PRETORIA**

**Date of Hearing:** 17 September 2025

**Date of Judgment:** 22 September 2025

**Appearances:**

**Counsel for the Applicant:**

Instructed by:

**Respondent:**

**Adv S Webster**

Macrobert Inc.

Brooklyn, Pretoria

**in absentia**