

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG.**

Case Number: 2024-034828.

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

22 September 2025

DATE

A handwritten signature in black ink, appearing to be "K. [unclear]", written over a black rectangular redaction box.

SIGNATURE

In the matter between:

ARNOLD STYENBERG

First Applicant

MARTHINUS GODFRIED STRUWIG

Second Applicant

And

NEDBANK LIMITED

Respondent

JUDGMENT

NOKO J

[1] The applicants have launched an application for leave to appeal the order and the whole judgment I handed down on 9 May 2025, wherein I, *inter alia*, granted an order for payment of the amount of R36,147,859.75 against the applicants jointly and severally, the one paying the other being absolved.

[2] The first applicant contended that I erred in accepting the case that was irregularly introduced in the replying affidavit, which introduced a new cause of action to which an amended certificate of balance was attached. In addition, the common law principle regarding renunciation of the benefit of excussion should not have been invoked and does not find application in this *lis*. Furthermore, I erred in not finding against the respondent who approached the court with unclean hands. The counsel correctly contended that the points raised reflect a misunderstanding of the judgment, and the issues raised were correctly addressed in the main judgment

[3] The counsel for the second applicant pinned his argument on the contention that I erred in granting an order for costs against the second respondent, as the delay was a result of the liquidators to avail relevant documents timeously. Both the counsel for the first applicant and the respondent stated that the postponement of the matter on 29 April 2025 was at the instance of the second applicant, and no argument was advanced before the main judgment.

[1] It is trite that where the application for leave to appeal, the applicant must demonstrate, *inter alia*, that the appeal has a reasonable prospect of success or that there are other compelling reasons why the appeal should be heard.

[2] It is also trite¹ that the Superior Court Act has introduced a higher threshold to be met in applications for leave to appeal, and the usage of the word ‘*would*’ requires the applicant to demonstrate that another court would certainly come to a different conclusion.

¹ See *Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325. *MEC for Health, Eastern Cape v Mkhitha* 2016 ZASCA (25 November 2016), *Acting National Director of Public Prosecutions and Others v*

[3] The mere possibility of success, an arguable case, or one that is not hopeless, is not enough.² There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.³

[4] I had regard to the reasons advanced predicated the grounds for leave to appeal, raised by both applicants and I am not persuaded that I erred as alleged and further that the applicants met the required threshold that the appeal has reasonable prospects of success, and further that another court would come to a different conclusion, or that there are other compelling reasons to allow the appeal. If anything, the contentions marshalled during the arguments for leave to appeal were dealt with in the main judgment. To this end, the application for leave to appeal is bound to fail.

[5] With regard to the costs, I find no reason to deviate from the legal principle that the costs should follow the results.

[6] In the premises, I grant the following order:

That the application for leave to appeal is dismissed with costs on scale B including costs for counsel where so employed.


M V NOKO
Judge of the High Court

DISCLAIMER: This judgment was prepared and authored by Judge Noko 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 Case Lines. The date for hand-down is deemed to be 22 September 2025.

Democratic Alliance: In Re Democratic Alliance v Acting Director of Public Prosecutions and Others 2016 ZAGPPHC 489.

² *MEC for Health, Eastern Cape v Mkhitha* 2016 ZASCA (25 November 2016) at para 17.

³ *S v Smith* 2012 (1) SACR 527.

Dates:

Hearing: 17 September 2025.

Judgment: 22 September 2025

Appearances:

For the first Applicant:

Scheepers J, instructed by Bennecketom Inc.

For the second Applicant:

Koovertjie R, instructed by Vermaak Att.

For the Respondent:

Kabelo S, instructed by KWA Attorneys.

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