



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
6/11/2025	
DATE	SIGNATURE

CASE NO. 27169/2020

In the matter between:

ABSA BANK LIMITED

Applicant

and

CORNELIUS DE HEUS

Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

H G A SNYMAN AJ

INTRODUCTION

[1] I granted the application of the applicant ("ABSA") for the reserve price on the sale of execution of the fixed property of the respondent ("Mr de Heus") to be

reduced from R750,000.00 to R600,000.00. I ordered Mr de Heus to pay ABSA's costs.

[2] The reasons for my judgment appear from my judgement dated 3 September 2025.

[3] Mr de Heus applied for leave to appeal against the judgment on 23 September 2025. He only seeks leave to a full bench of this court, not also to the Supreme Court of Appeal.

[4] Mr de Heus seeks leave to appeal on the following four grounds, namely that this court erred:

[4.1] In finding that ABSA's deponent to the founding affidavit had the necessary authority to depose to the affidavit and represent ABSA in these proceedings. He says that there are reasonable prospects that another court will find that the authority annexed to the founding affidavit and the replying affidavit do not, on ABSA's own version, give the deponent the authority to represent, or institute the proceedings, on behalf of ABSA. Furthermore, that it expressly excludes her from signing or deposing to the founding affidavit;

[4.2] In finding that Mr de Heus did not invoke the mechanisms as provided for in rule 7. He contends that there are reasonable prospects that another court will find that the objection to authority that Mr de Heus raised in the answering affidavit, especially in the light thereof that Mr de Heus is a lay

person who represented himself, complied with the requirements of rule 7. He says that the authority that ABSA annexed to its replying affidavit did not prove that the deponent was authorised to depose or sign the founding affidavit on behalf of ABSA, nor institute the proceedings on its behalf;

[4.3] In not postponing the hearing of the application where the legal representative of ABSA tendered a further resolution. He says that there are reasonable prospects that another court will find that the hearing of the application should have been postponed in order to consider the further resolution that the legal representative of the respondent tendered, but did not produce at the hearing. He argued that on the resolutions that were before court, it was apparent that the deponent did not have the necessary signing powers, nor authority to institute the application on behalf of ABSA;

[4.4] In finding that Mr de Heus did not make out a case for an alternative model for sale in execution to take place. He argued that there are reasonable prospects that another court will come to the conclusion that in terms of rule 46A(8)(i) it may make any appropriate order in respect of an application heard by it in terms of rule 46A. That without a response by ABSA on the merits of Mr de Heus' contention in respect of the alternative model for the sale in execution to take place, this court should have accepted Mr de Heus' averments and an order should have been made in line with Mr de Heus' proposal for an alternative model of the

sale in execution to take place. He says that this court's remark that the Registrar is already overburdened, is not supported by any facts, evidence or empirical data advanced by any of the parties.

- [5] ABSA opposes the application for leave to appeal. It says that the application ought to be dismissed with costs on scale B.

TEST FOR LEAVE TO APPEAL

- [6] Sections 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 (*"the Superior Courts Act"*), provide that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard.
- [7] According to Bertelsmann J in *Mont Chevaux Trust (IT 2012/28) v Tina Goosen*¹ the test under section 17(1)(a)(i) of the Superior Courts Act is more stringent than what was previously the case:

"It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in [the Superior Courts Act]. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion 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". (emphasis added)

¹ *Mont Chevaux Trust (IT 2012/28) v Tina Goosen* LCC14R/2014 (unreported judgment of the Land Claims Court delivered on 3 November 2014).

- [8] In *MEC for Health, Eastern Cape v Mkhitha*,² the Supreme Court of Appeal held that:

“Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the [Superior Courts Act] makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

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.”³

- [9] In *KwaZulu-Natal Law Society v Sharma*,⁴ van Zyl J held that the test enunciated in *S v Smith*⁵ still holds good:

“In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”⁶

- [10] The enquiry requires this court to consider each submission and how it was

² *MEC for Health, Eastern Cape v Mkhitha*, unreported, SCA case no 1221/2015 dated 25 November 2016, 2016 JDR 2214 (SCA).

³ *Id* at paras 16 to 17.

⁴ *KwaZulu-Natal Law Society v Sharma* 2017 JDR 0753 (KZP).

⁵ *S v Smith* 2012 (1) SACR 567 (SCA).

⁶ *Id* at paras 29 to 30.

addressed by it. It is the evaluation of the reasons this court furnished, which will reveal whether there are reasonable prospects of success.

- [11] In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*,⁷ the Supreme Court of Appeal held that:

“In order to be granted leave to appeal in terms of s 17(1)(a)(i) and s 17(1)(a)(ii) 2 of [the Superior Courts Act] an applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.” (emphasis added)

- [12] Therefore, even if there is an important point of law, or an issue of public importance in point, no purpose is served by granting leave to appeal, if the prospects of interference with the judgment at first instance is remote.

DISCUSSION

- [13] Mr de Heus’ first, second and third grounds for applying for leave to appeal can conveniently be considered together.

- [14] The Supreme Court of appeal held in *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) that:

⁷ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA).

“The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised..... In any event, rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided.”⁸

- [15] The same principle was again emphasized by the same court in *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others*⁹ where it held that:

*“The position is now established that the manner to challenge the authority of a litigant is to utilise rule 7(1) of the Uniform Rules of Court. The original understanding of rule 7(1) was that it only applied to the mandate provided to attorneys. However, this Court in *Unlawful Occupiers, School Site v City of Johannesburg (Unlawful Occupiers)*, citing *Eskom v Soweto City Council* and *Ganes and Another v Telecom Namibia Ltd*, held that the remedy for a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in rule 7(1)”¹⁰*

- [16] At the hearing of the application for leave to appeal before me, Mr de Heus submitted that ABSA opened the door for him to challenge the authority of ABSA's deponent to institute the application on ABSA's behalf and deposing to the founding and replying affidavits, by attaching the resolution.
- [17] He persisted with the argument that the deponent has failed to show that she was authorised to depose to the affidavit.
- [18] At paragraph [3] of my judgment I referred to the judgment of *Ganes* referred to

⁸ At para 19.

⁹ (459/22) [2023] ZASCA 112 (26 July 2023).

¹⁰ At para 21.

above I reiterate that the Supreme Court of Appeal in that matter held that a deponent to an affidavit does not need authority to depose to the affidavit. As I see it, ABSA did not “*open the door*” attaching the resolution to the founding and replying affidavits. This is a legal issue on which the Supreme Court of Appeal has already authoritatively ruled.

[19] Mr de Heus argues that he substantially complied with rule 7 of the Uniform Rules of Court by challenging ABSA’s authority to the deponent to launch the application in his affidavit. He argued that this is a matter of “*substance over form*”.

[20] Rule 7 of the Uniform Rules of Court provides as follows:

“7 Power of attorney

- (1) *Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.*
- (2) *The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.*
- (3) *An attorney instructing an advocate to appear in an appeal on behalf of any party other than a party who has caused the appeal to be set down shall, before the hearing thereof, file with the registrar a power of attorney authorising him so to act.*
- (4) *Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of*

attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power.

(5)(a) No power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or a deputy state attorney or any attorney instructed, in writing, or by telegram by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his capacity as such by virtue of any provision of the State Attorney Act, 1957."

[21] As appears from rule 7(1) it is ultimately a question whether or not the deponent satisfied me that she was duly authorised to institute the application.

[22] This reminds of a situation Brand JA described, writing for the full court, in the matter of *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at paragraph [16], namely that:

"[16] However, as Flemming DJP has said, now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority should not adopt the procedure followed by the appellants in this matter, ie by way of argument based on no more than a textual analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. After all, there is rarely any motivation for deliberately launching an unauthorised application. In the present case, for example, the respondent's challenge resulted in the filing of pages of resolutions annexed to a supplementary affidavit followed by lengthy technical arguments on both sides. All this culminated in the following question: Is it conceivable that an application of this magnitude could have been launched on behalf of the municipality with the knowledge of but against the advice of its own director of legal services? That question can, in my view, be answered only in the negative." (emphasis added)

[23] I was persuaded that the deponent to the ABSA affidavits in this matter was duly authorised to institute the proceedings on behalf of ABSA. It is

inconceivable for me that after all these years the ABSA official who is prosecuting this matter is not duly authorised to do so. That ABSA is somehow oblivious to what is happening.

[24] Under the circumstances there was no need for a further postponement and a further wasting of judicial time on this matter. Under the circumstances I am of the view that there are no reasonable prospects that a court of appeal would find differently regarding the first three grounds of appeal.

[25] In so far as Mr de Heus' contention is concerned that this court erred in not ordering a different process of execution, namely having the sale being conducted by the Sheriff at the Registrar with the Registrar overseeing, I am also of the view that there are no reasonable prospects that a court of appeal would find differently.

[26] I held in this regard in my judgment at paragraph [38] that:

"Mr de Heus has not presented any authority for his opposition. He has also not provided any statistical data, or evidence that would support his suggestion of an unprecedented mode of sale in execution."

[27] The fact of the matter remains that the only application before this court was for the reserve price to be reduced from R750,000.00 to R600,000.00. There was no counter application that the mode of sale ought to be altered. As I see it, rule 46A(8)(i) also does not envisage that I can turn the whole execution process on its head.

[28] In my view, there are no reasonable prospects that a court of appeal would

interfere with this finding.

- [29] Mr de Heus also criticised this court's judgment to the extent that it was held in paragraph [39] of the judgment that:

"Moreover, Mr de Heus' suggestion does not accord with the rules and it will overburden the Registrar of this court."

- [30] Mr de Heus' argument is that there are no statistical data or evidence that would support the suggestion that such a changed sale will *"overburden the Registrar"*.

- [31] Mr Eastes on behalf of ABSA Bank submitted that all lawyers know that this would be the position. I agree that it is a matter of common knowledge in this Division, often cited in judgments and from the bench, that it is described as one of the busiest Divisions in the country. This has been the position for many years.

- [32] In any event, I agree with the submission Mr Eastes made on behalf of ABSA that even if I am wrong with this comment I made in passing, it does not have an impact on the prospects of success on appeal.

- [33] In the result, as I see it, considering the threshold articulated in the authorities referred to above, and the reasons furnished by this court for its decision:

[33.1] There is no reasonable prospect of success on appeal; and

[33.2] There is no compelling reason which warrant the intervention of the Full Court or on appeal.

[34] In the result, Mr de Heus' application for leave to appeal ought not to succeed.

[35] Mr Eastes asked in his heads of argument filed as part of the application for leave to appeal that I grant an order of costs against Mr de Heus on an attorney and client scale, alternatively on scale B. At the hearing before me he did not persist with the request for attorney and client scale costs. Only for costs to be on scale B.

[36] Mr de Heus submitted that this matter does not warrant costs at scale B. I agree. For the same reason that I did not order scale B costs when granting my order against which the application for leave to appeal lies, I am also of the view that an order at scale B is not warranted in the present instance.

[37] In the result, the following order is made.

ORDER

[1] The application for leave to appeal is dismissed with costs



H G A SNYMAN
Acting Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

Heard in court: 18 August 2025

Delivered and uploaded to CaseLines: 6 November 2025

Appearances:

For the applicant:

Adv J Eastes

	Instructed by Delberg Attorneys Inc.
For the respondent:	Mr C de Heus
	In person