



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION PIETERMARITZBURG**

CASE NO: 804/2023P
805/2023P

Before: Honourable Ncube J

Heard on: 19 May 2025

Delivered on: 24 November 2025

DELETE WHICHEVER IS NOT APPLICABLE

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

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DATE

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SIGNATURE

In the matter between:

BULELANI ZOLANI BANGANI

Applicant

and

THE STANDARD BANK OF SA LTD

Respondent

and

BULELANI ZOLANI BANGANI N.O.

First Applicant

NOBUHLE BEAUTY MAKHANYA N.O

Second Applicant

and

THE STANDARD BANK OF SA LTD

Respondent

ORDER

In the result I make the following order:

1. The Application for Leave to Appeal is dismissed with costs.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

NCUBE J

Introduction

[1] This is an application for leave to appeal. I shall refer to the parties as they were referred to in the original hearing. The respondents seek leave to appeal to the Full Court of this Division against the whole judgment and order of this court handed down on 20 September 2024.

Principals on Application for Leave to Appeal

[2] The starting point of exercise is section 17 of the Superior Courts Act¹ which provides:

“17 Leave to appeal

(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;

¹ Act 10 of 2013

- (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”*

[3] Commenting on the aspect of reasonable prospect of success, In *MEC Health Eastern Cape v Mkhitha*² Scheepers AJA (as he then was), expressed himself in the following terms :

“ An applicant for leave to appeal must convince this 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 sound rational basis to conclude that there is reasonable prospect of success on appeal.”

[4] In *Smith v S*³ Plasket JA said the following :

“What the test of reasonable prospect of success postulates is 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 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.”

[5] In the past, the test applied by courts in the determination of an application for leave to appeal, was whether there was a reasonable prospect that another court may come to a different conclusion to the one reached by the the court *a quo*⁴. With the coming into operation of section 17 above, the threshold to grant leave to appeal has been raised. In *Mont Chevaux Trust v Tina Goosen and 18 Others*⁵, it was held:

² (1221/2015) (2016) ZASCA 176 (25 November 2016) Para 17

³ 2012 (1) SACR 567 (SCA) para 7

⁴ *Commissioner of Inland Revenue v Tuck* 1989(4) SA 888(T) at 890-B

⁵ (LCC14R/2014) [2014] ZA LCC 20(3 November 2014)

“It is clear that the threshold for granting leave to appeal against the 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 at a different conclusion see Van Heerden v Cronwright and Others 1985(2) SA 342 (T) at 343 H. 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. This new standard is applied by section 37(4)(b) of the Restitution of Land Rights Act 22 of 1994 to this Court’s duty to consider the prospects of an intended appeal”

(6) In *Notshokovu v S*⁶ it was said that an appellant faces a higher and stringent threshold under the Superior Courts Act. Therefore, in terms of section 17 the enquiry is not whether another court “may” come to a different conclusion, but “would” indeed come to a different conclusion.

[7] In *Four Wheel Drive CC v Leshni Rattan NO*⁷ Schippers JA expressed himself in the following terms:

“There is a further principle that the court a quo seems to have overlooked-leave to appeal should be granted only when there is a sound, rational basis for the conclusion that there are prospects of success in appeal? In the light of its finding that the plaintiff failed to prove locus standi or the conclusion of the agreement, I do not think that there was reasonable prospect of an appeal to this court succeeding or that there was a compelling reason to hear an appeal”

Brief Background

[8] The application for leave to appeal arises from this court’s order of 20 September 2024, effectively, and finally sequestrating the estate of the respondent Bulelani Zolani Bangani (“Mr Bangani”) as well as the final sequestration of the Bangani Family Trust (“the Trust”) of which Mr Bangani and one Nobuhle Beauty Makhanya (“Miss Makhanya”) were trustees.

⁶ (157/15) [2016] ZASCA (7 September 2016)

⁷ 2019(3) SA 451 (SCA) para 34

[9] On 15 April 2019, the Standard Bank obtained judgment against the entity known as “ Xesibe Construction CC and against Mr Bangani in his personal capacity. Standard Bank also obtained judgment against Mr Bangani and Miss Makhanya in their capacity as trustees of the Bangani Family Trust. The judgment was for the payment of the sum of R2 149 992.00 and R6 373 221.62 with interest. Mr Bangani and the Trust failed to satisfy the judgment debt.

[10] On 7 December 2022, the Sheriff personally served Mr Bangani with a Warrant of Execution and demanded satisfaction of the warrant of execution. Mr Bangani informed the Sheriff that he could not make payment in terms of the Warrant. The Sheriff demanded movable property to attach and searched for it but could not find any. Therefore, the return was one of *Nulla Bona*. The *Nulla Bona* return indicates that Mr Bangani did not advise the Sheriff of any other methods which the debt could be settled despite the fact that Mr Bangani was obliged to do so. On his own version, Mr Bangani states:

“ The response I gave the sheriff is that the trust has no money in liquid cash to settle the amount demanded”

Grounds of Appeal

[11] Initially the Respondent listed five(5) grounds of appeal. When the application for leave to appeal was argued, Mr Ntlokoana, Counsel for the Respondents, withdrew the fourth ground and he abandoned ground number 5. That leaves us with only three(3) grounds.

[12]

Ground 1 On this ground the Respondent contends that this court erred in interpreting paragraph 3 of the Execution Order against immovable property as money order and that this court did not deal with the paragraphs of the original court order which deal with the money order.

This ground is vague and does not make sense. At paragraph 3 and 7 of this court's judgment, I did in fact find that a money judgment was made against Respondents. The ground is considered and dismissed.

Ground no 2

[13] On this ground the Respondents state

“ On the nulla bona return, where the veracity of its contents are contested, the version of Mr Bangani, on how it was served has not been challenged by an affidavit from sheriff disputing Mr Bangani's version. On this ground alone another court would have come to a different conclusion than the one reached by this Honourable Court”

I can only repeat what Mr Bangani says in his answering affidavit where he says:

“the response I gave to the sheriff is that the trust has no money in liquid cash to settle the amount demanded”

The onus was therefore on Mr Bangani to inform the sheriff about other assets which were available and where such assets were to be found⁸. He did not do so. This ground is considered and it is dismissed.

Ground No 3

[14] On this ground the Respondents state:

“Further to the above, it is submitted that given the two contrasting versions from the nulla bono return and from Mr Bangani the Honourable Court misdirected itself in concluding that there are no disputes of fact. It is submitted that another court might come to a different conclusion on this issue”

Not every dispute a fact is relevant. There must be a real, material or genuine dispute of fact. Mr Bangani himself told the sheriff that the Trust had no money to satisfy the debt and he did not indicate that there were other assets which could be realized towards the settlement of the debt owed to Standard Bank. On the date of the sequestration judgment, the debt owed to Standard Bank was still outstanding,

⁸ See Wilken and Others NHO v Reichenberg 1999(1) SA 852 (W) at 856 C-E

despite Mr Bangani saying he has sufficient assets to satisfy the warrant of execution.

This ground is considered and it is dismissed.

All grounds are considered and dismissed.

Finding

[15] I find that there is no reasonable prospect of success on appeal and there are no compelling reasons why appeal should be heard.

Order

[16] In the result, I make the following order:

1. The Application for Leave to Appeal is dismissed with costs.

**NCUBE MT
JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
PIETERMARITZBURG**

APPEARANCES:

For the Appellant: Mr V Ntlokwana

Instructed by: Ntlokwana & Associate Inc

For the Respondent: Mr T.Q. Reddy

Instructed by: Drake Flemmer & Osmond Attorneys