

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

CASE NO: 014464-23

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 17 November 2025

SIGNATURE OF JUDGE:

In the matter between:

KERRIE BOEREWORS (PTY) LTD

Applicant

and

BULSKY DEVELOPMENTS (PTY)LTD

First Respondent

BWS PROPERTY DEVELOPMENTS PTY LTD

Second Respondent

TYRREL OLIVIER

Third Respondent

WALKER SENNER INC.

Fourth Respondent

JUDGMENT ON LEAVE TO APPEAL

FLATELA J

Introduction

[1] This is an application for leave to appeal brought by the Fourth Respondent against the whole judgment and order dated 20 August 2025. For convenience, the parties will be designated as they are in the main application.

[2] On 20 August 2025, I issued an order against the Fourth Respondent, Walker Senne Inc., a law firm, for the payment of R2,000,000 plus interest based on the undertakings made by the Fourth Respondent, specifically on the irrevocable undertaking given on 28 July 2022 to pay R2,000,000 to the Applicant upon the registration of immovable property situated at Erf 2[...] X[...] Ext. 2, which occurred on 23 August 2022. I relied on the reliance theory to hold the Fourth Respondent liable.

[3] In essence, the Fourth Respondent argues that the Court erred in concluding that the Applicant relied on the irrevocable undertaking dated 28 July 2022, whereas, in its replying affidavit, the Applicant stated that the replacement undertakings, including the one dated 28 July 2022, were considered unacceptable. The Applicant had requested certain amendments to the 28 July undertaking, and the Fourth Respondent did not respond to the Applicant's requests.

[4] The Fourth Respondent further contends that the Court erred in failing to consider the email from the Applicant's attorneys dated 22 August 2022, in which the Applicant's attorney confirmed that there was no irrevocable undertaking in place and that, if they do not receive the amended undertaking, the Applicant would seek the Court's intervention.

[5] The Fourth Respondent argues that, at the time of the property's registration, no valid undertaking was in effect, and the Fourth Respondent was not obliged to make payment to the Applicant. All other grounds of appeal stem from the main ground. I do not intend to repeat them.

The test for Leave to Appeal

[6] An application for leave to appeal is regulated by s 17(1) of the Superior Courts Act 10 of 2013, which provides:

‘(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;
- (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.’

[7] Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others*¹ held as follows:

It is clear that the threshold for granting leave to appeal against a 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 to a different conclusion. See Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 342H. The use of the word “would” in the new statutes indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.”

[8] Plasket J, in **Smith v S** ²

What the test of reasonable prospects of success postulates is a dispassionate decision, based on facts and the law that the Court of Appeal could reasonably arrive at the conclusion different to that of the Trial Court. In

¹ *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2335 (LCC) at para 6.

² *Smith v S* 2012 (1) SACR 567, 570 para 7

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.”

[9] Dealing with the threshold for granting the leave to appeal, Dlodlo JA in *Ramakatsa and Others v African National Congress and Another*³ had this to say:

*“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.”*⁴

[10] I have considered the grounds of appeal, the arguments presented by the Fourth Respondent’s counsel, as well as the counterarguments from the counsel representing the Applicant opposing the application for leave to appeal.

³ *Ramakatsa and Others v African National Congress and Another* Case No. 724/2019) [2021] ZASCA 31 (31 March 2021)

⁴ See *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA); *MEC Health, Eastern Cape v Mkhitha* [2016] ZASCA 176 para 17.

[11] I am of the opinion that a reasonable prospect of success has been demonstrated. In the circumstances, I hereby issue the following order:

1. The application for leave to appeal is granted to the Full Court of the Gauteng Division, Pretoria.
2. The costs of this application shall be costs in the Appeal.

FLATELA LULEKA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand-down are deemed to be 10:00 on 17 November 2025.

Appearances

Counsel for the Fourth Respondent:	Adv Du Preez SC
Instructed by:	Waker Senne Incorporated
Counsel for the Applicant	Adv Nieuwoudt
Instructed by:	Moss Marsh & Georgiev Attorneys
Date of the Hearing:	6 November 2025
Date of the Judgement:	17 November 2025