

REPUBLIC OF SOUTH AFRICA



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

Case Number: 105915/2023

1.	REPORTABLE: YES / NO
2.	OF INTEREST TO OTHER JUDGES: YES/ NO
3.	REVISED: YES /NO
<u>24 November 2025</u>	
DATE	SIGNATURE

In the matter between:

CHANTELLE SCOTT

Applicant

and

THE NATIONAL CREDIT REGULATOR

First Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

THE BANKING ASSOCIATION OF SOUTH AFRICA

Third Respondent

**THE DEBT COUNSELLORS' ASSOCIATION
OF SOUTH AFRICA**

Fourth Respondent

STANDARD BANK OF SA LIMITED

Fifth Respondent

FIRSTRAND BANK LIMITED

Sixth Respondent

NEDBANK LIMITED

Seventh Respondent

ABSA BANK LIMITED

Eighth Respondent

CAPITEC BANK HOLDINGS LIMITED

Ninth Respondent

The matter was heard virtually. The judgment is handed down electronically by circulation to the parties' legal representatives by email and uploading to the electronic file of this matter on Caselines. The date of the judgment and order is deemed to be 24 November 2025.

J U D G M E N T

LEAVE TO APPEAL APPLICATION

Mazibuko AJ (Janse van Nieuwenhuizen et Mali JJ concurring)

INTRODUCTION

[1] The third, fifth, sixth, seventh, eighth and ninth respondents (hereinafter referred to as "BASA") seek leave to appeal to the Supreme Court of Appeal ("the SCA") against the whole judgment and the order of this Full Court delivered on 12 May 2025, where the Full Court granted an order in favour of the applicant, (hereinafter referred to as "Scott") declaring that an application for debt review and or a debt review order does not purge or cure the default of the original credit agreement for the purposes contemplated in section 103(5) of the National Credit Act 34 of 2005 ("the NCA").

[2] Aggrieved by the Full Court's decision, BASA has now approached this Full

Court for leave to appeal to the SCA against the judgment and order. The application for leave to appeal is opposed, and no cross-appeal has been filed.

- [3] BASA argues that there are compelling reasons why they ought to be granted leave to appeal, as the judgment affects consumers and credit providers nationwide. Its implications reach far beyond the immediate interests of the parties. Credit providers will need to adjust their systems and software to account for the judgment. It is further argued that there are compelling reasons, in the public interest, for the SCA to hear the appeal, and there are reasonable prospects of success on appeal.
- [4] Notwithstanding its concession that the judgment's implications reach far beyond the immediate interests of the parties, Scott argues that BASA has not shown that there are reasonable prospects of success on appeal.
- [5] Leave to appeal may be granted where a judge is of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard, such as the interests of justice. In the matter of **Caratco (Pty) Limited v Independent Advisory (Pty) Limited**,¹ it was pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would include an important point of law or an issue of public importance that will have an effect on future disputes in our courts. The court also emphasised that the merits remain vitally important and are often decisive.
- [6] The test laid down in Section 17 of the Superior Courts Act 10 of 2023, is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought

¹ 2020 (5) SA 35 (SCA).

to be appealed against.² The court held in the case of **The Mont Chevaux Trust v Tina Goosen & 18 Others (supra)** that:

"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 Cornwright & Others 1985 (2) SA 342 (T) at 343H. 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."

- [7] In **MEC for Health, Eastern Cape v Mkhitha and Another**,³ the Supreme Court of Appeal held 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 not hopeless is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

- [8] Having read the application for leave to appeal and considered the submissions by counsel for BASA and Scott, I am persuaded that the issues raised by both parties are of public interest and have significant implications for participants in the credit industry, in which another court is likely to reach legal conclusions that dissent from mine. Those issues include my interpretation of section 103 of the NCA. There are reasonable prospects of the Supreme Court of Appeal reaching a legal conclusion dissent from mine. Leave to appeal has reasonable prospect of success and should be granted.

- [9] In the circumstances, I propose the following order:

ORDER:

- [9.1] The application for leave to appeal to the Supreme Court of Appeal is

² The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others 2014 JDR 2325 at para [6].

³ (1221/2015) (2016) ZASCA 176 (25 November 2016).

granted.

[9.2] The costs of this application for leave to appeal shall be costs in the appeal.



N G M MAZIBUKO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree



N MALI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree, and it is so ordered



N JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing: 18 November 2025

Judgment delivered: 24 November 2025

Appearances:

For the applicant: Adv N G Louw

Attorneys for the applicant: Jennings Inc

For first, second, fourth and tenth respondents: No appearance

For third, fifth to ninth respondents: Adv A Cockrell SC

Attorneys for third, fifth to ninth respondents: Cliffe Dekker Hofmeyr Inc