



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 739/2023

In the matter between:

DENZIL EGON WORTMANN

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

Neutral citation: *Denzil Egon Wortmann v The Road Accident Fund (Leave to Appeal)* (Case no: 739/2023) 05 December 2025.

Coram: Mamosebo J.

Heard: 21 November 2025.

Delivered: 05 December 2025.

Summary: Application for leave to appeal – Applicant relies on s 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 – Whether the envisaged appeal has reasonable prospects of success – Whether there is some other compelling reason why the appeal should be heard – None established – Leave to appeal is refused.

ORDER

1. The application for leave to appeal is dismissed with costs.

JUDGMENT

Mamosebo J

- [1] In this opposed application, the applicant seeks leave to appeal to the Full Court of this Division, alternatively, to the Supreme Court of Appeal, against the whole of my judgment and order handed down on 15 August 2025. The applicant relies on s 17(1)(a)(i) and (ii) of the Superior Courts Act¹ that his appeal would have reasonable prospects of success, and or that there is a compelling reason for the appeal to be heard.
- [2] The Applicant filed a notice of application for leave to appeal with the Office of the Registrar on 29 August 2025. Whereas it is settled that the grounds of appeal must be clearly outlined and succinct, the applicant's grounds were presented in a form of argument which is impermissible.²
- [3] The following are the surmised grounds upon which the applicant relies in alleging that I erred in my factual findings and in the application of the relevant legal principles in the judgment:
- 3.1 in finding, at paragraph 16.3, that it is of no consequence whether the Toyota Landcruiser was travelling straight or had already begun executing a right turn manoeuvre when it was collided with from the rear by the VW kombi driven by the applicant;
- 3.2 applicant avers that once it is established that the insured driver was turning right, the *Bata Shoe*³ (and other relevant authorities) legal principles are applicable. That it has been held in a long line of cases

¹ 10 of 2013.

² See *Songono v Minister of Law and Order* 1996 (4) SA 384 (E) at 385I – J; see also *Hing and Others v Road Accident Fund* 2014 (3) SA 350 (WCC) para 4; see also *Mahori and Another v Firststrand Bank Ltd and Others (Leave to Appeal)* 2024 JDR 1108 (GP) para 7.

³ *Bata Shoe Co. Ltd (South Africa) v Moss* 1977 (4) SA 16 (WLD).

that the execution of a right turn is inherently hazardous due to oncoming and following traffic. Thus, a driver undertaking such a manoeuvre owes a stringent duty to satisfy himself that it is safe to proceed, to do so at the opportune moment, and to give adequate warning to both approaching and following vehicles. That regard being had to those authorities⁴, the Court erred in failing to find that the Applicant was entitled to material success, with negligence apportioned in his favour;

- 3.3 in drawing a negative inference from the applicant's failure to call as witnesses the passengers who were in the Kombi he was driving, to corroborate his version;
- 3.4 that the Court erred, at paragraph 9 of the impugned judgment, in its interpretation of the expert evidence on stopping distance. That the Court found that the applicant required approximately 61 – 81m to stop, including reaction time. However, the expert evidence was that this distance reflected only the braking distance after brake application. Once reaction time is added, the total stopping distance is approximately 131m. The Court therefore misdirected itself in concluding that the applicant was following the bakkie too closely to stop if required;
- 3.5 having found that there was no material criticism that could be levelled against the reconstruction expert, I did not refer to his crucial findings. As averred by the Applicant, those findings relate to the expert's evidence that the brake marks identified in the left-hand lane, as shown in several photographs, were deposited by the bakkie. That the expert further demonstrated, by reference to other tyre marks, the respective paths of travel of both vehicles after braking commenced. That this evidence corroborated the applicant's version that the insured driver violently applied brakes before attempting a right-turn manoeuvre, and it was never challenged by the defendant;

⁴ *Bata Shoe (Supra)*; *Milton v Vacuum Oil Company of SA Ltd* 1932 AD 197; *AA Mutual Insurance Association Ltd v Nomeka* 1976 (3) SA 45 (A).

3.6 in simplifying the findings of Van der Linde J in the *Intercape* case in paragraph 25 of the impugned Judgment;

3.7 in finding, at paragraph 26.6 of the impugned judgment, that the applicant gave poor evidence. The Court further erred in treating as immaterial the contradictions that emerged under cross-examination in the testimony of both the insured driver and his passenger. In addition, the Court misdirected itself in paragraph 19 in holding that the parties' versions were mutually irreconcilable.

[4] The test to determine whether leave to appeal should be granted or not is trite.⁵ Section 17(1)(a) of the Superior Courts Act espouses two situations under which a court may grant leave to appeal, namely, where the appeal would have reasonable prospects of success or where there is a compelling reason for the appeal to be heard. Leave to appeal may also be granted if it will be in the interests of justice to do so. The interests of justice may indeed constitute a compelling reason for the appeal to be heard.⁶ What stands for determination is whether the applicant has satisfied the requirement of prospects of success, and or whether there is some other compelling reason why the appeal should be heard.

[5] With reference to ground 3.1, the applicant is silent in both the written and oral submissions about maintaining a reasonable following distance as dealt with in the main judgment at paragraphs 21 to 25. The version that this Court accepted was that of the defendant, that the applicant approached at high speed from behind and was in the process of overtaking without observing the respondent's indicator light signalling to turn right.

[6] In relation to ground 3.2, the applicant avers that this Court did not deal with all the quoted authorities in addition to *Bata Shoe*. Having analysed the evidence in its totality and having rejected the version of the applicant,

⁵ *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC) para 6; *S v Notshokovu* 2016 JDR 1647 (SCA) para 2; *S v Smith* 2012 (1) SACR 567 (SCA) para 7; *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) para 10; *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) para 2.

⁶ *Ramakatsa and Others v African National Congress and Another* (*ibid*) para 10; see also *S v Notshokovu* (*ibid*) para 15.

meaning that the applicant had failed to act as a reasonable driver (see paragraphs 21 to 25 of the main judgment), I do not see how apportioning negligence would have served to address the matter.

- [7] The contention made on behalf of the applicant with reference to ground 3.3 pertaining to his failure to call witnesses, passengers in his kombi, as well as the other kombi, to corroborate his version, is that the court erred in drawing a negative inference from his failure to call them, despite their availability. Paragraph 18 of the main judgment deals adequately with the *Elgin*⁷ judgment and the principles it enunciates, and thus bears no repetition. He has not proffered any reasons why they were not called except to submit that it was neither established nor suggested by the court or the defence during trial whether any of the passengers could give any reliable account of the details of the collision. He then proffers an unhelpful proposition that passengers in vehicles “notoriously” do not pay attention to the road in front of them as they are not driving. This contention is misplaced in every material respect. The onus lies with the applicant to prove his case on a balance of probabilities.
- [8] Other than challenging this Court for not dealing with all the aspects that the reconstruction expert has dealt with, the applicant’s argument is silent in respect of the SCA’s principle enunciated in *Representative of Lloyds and Others v Classic Sailing Adventures (Pty) Ltd*⁸ (“*Lloyd*”) quoted in full at paragraph 20 of the main judgment. As stated in the main judgment, the applicant was a single witness who tried to augment his version with reconstructed expert evidence. *Lloyds’* case affirmed that where there is an eyewitness or direct evidence of an occurrence, this may render the reconstructions of experts less relevant or even irrelevant.
- [9] Impliedly, the applicant also contends that the Court failed to conduct its duty of proper consideration as espoused by the Constitutional Court in *Vodacom (Pty) Ltd v Makate and Another*⁹ where the ConCourt said:

⁷ *Elgin Fireclays Ltd v Webb* 1947 (4) SA 744 (A).

⁸ 2010 (5) SA 90 (SCA) para 60.

⁹ [2025] ZACC 13 (CC); 2025 (10) BCLR 1174 (CC) paras 43 and 57.

'Justice and, indeed, the court process are not about perfection; courts are not to be held "to some abstract standard of perfection".'

...

'Of critical importance is that "there is no duty on a judge in giving reasons to deal with every argument presented by counsel in support of [their] case". I say of "critical importance" because some litigants may find this statement of the law attractive for nitpickingly arguing that a court's judgment failed to deal with this or that point and that, therefore, there was a breach of the right to a fair hearing. Let them be warned that they will not succeed. That is not what this statement of the law is about. It is about the substance of a judgment viewed holistically. So viewed, does the judgment tell a reasonable, if not discerning, reader that there was compliance with the duty of proper consideration? In that regard, it is enough if the judgment identifies the issues that were vital to the determination of the matter and then shows how they were determined. One or two issues may not necessarily be critical for that holistic look at the substance of the judgment.'

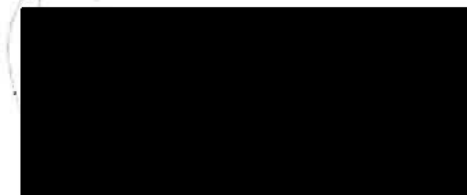
[10] Ultimately, no judgment can ever be perfect and all-embracing, and it does not necessarily follow that, because something has not been mentioned, therefore it has not been considered.¹⁰ Having carefully and dispassionately considered the application for leave to appeal in order to determine whether there are reasonable prospects that another court would come to a different finding than this court had reached, I have not found any. There are, in my view, no cognisable prospects of success nor compelling reasons that warrant the attention of the Full Court of this Division or the Supreme Court of Appeal to entertain the envisaged appeal. I am therefore satisfied that there are no reasonable prospects of a successful appeal. In the result, the application for leave to appeal to the Full Court of this Division, alternatively, the Supreme Court of Appeal, must fail.

[11] Regarding costs, there is no reason why they should not follow the result.

[12] In the result, the following order is made:

¹⁰ *Rex v Dhlumayo and Another* 1948 (2) SA 677 (A) at 678.

1. The application for leave to appeal is dismissed with costs.



MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For Applicant: Adv. CR Van Onselen

Instructed by: Stefan Greyling Inc
Kimberley.

For Respondent: Mr A Mogano

Instructed by: Office of the State Attorney
Kimberley