



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>9/12/2025</u> DATE	
 SIGNATURE	

CASE NO. 794/2021

In the matter between:

VELOCITY FINANCE (RF) LIMITED

Plaintiff / Respondent

and

REYAKOPELE TRADING

Defendant / Applicant

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

H G A SNYMAN AJ

INTRODUCTION

[1] I dismissed the application the applicant (*Reyakopele Trading*) brought for rescission of the judgment the respondent (*Velocity Finance*) obtained against

it on 15 February 2024 (*"the order"*).

- [2] The reasons for my judgment and order appear from my judgment dated 22 October 2025. Reyakopele Trading applied on 31 October 2025 for leave to appeal to the Full Bench of this Court against the whole of my judgment and order.

GROUND FOR LEAVE TO APPEAL

- [3] As appears from Reyakopele Trading's notice of application for leave to appeal, Reyakopele Trading relies on six grounds of appeal.

First: Material non-consideration of procedural facts

- [4] Reyakopele Trading contends that this Court erred in failing to consider that Reyakopele Trading's founding affidavit was filed without the benefit of having received, or having sight of the full set of the combined summons. Reyakopele Trading relies in this regard on what is stated in paragraph 7.2 of the founding affidavit. At paragraph 1 of the application for leave to appeal it is stated that: *"[Velocity Finance's] affidavit was compiled based on limited information available at the time, as explicitly stated in para 7.2 of the founding affidavit, where the applicant's (sic) states that he will request the full set of summons from the plaintiff attorneys so that he can file a supplementary affidavit. This request was refused at the time, and the full bundle was only furnished weeks before the hearing of 20 August 2025."*

- [5] It was confirmed during the hearing of this application for leave to appeal that the relevant date was in fact 24 July 2025.
- [6] Reyakopele Trading argues that this Court's finding that Reyakopele Trading failed to set out a *bona fide* defence, did not consider this procedural limitation, which directly impaired Reyakopele Trading's ability to prepare a comprehensive affidavit. It was submitted that Reyakopele Trading was procedurally constrained by Velocity Finance's refusal to grant a full set of the combined summons when requested to do so.

Second: Audi alteram partem violation

- [7] Reyakopele Trading said that although this Court granted it leave to file heads of argument after the hearing, it did not extend similar procedural fairness to the issue of the supplementary affidavit, which was explicitly refused on the papers. It is argued that Reyakopele Trading was denied a reasonable opportunity to present its defence in full, which undermines the principle of *audi alteram partem*. The submission is made that procedural fairness is not a discretionary luxury, but a constitutional imperative.

Third: Failure to make a finding on address evidence

- [8] Reyakopele Trading submitted that it provided a utility bill dated 27 November 2020 in its name reflecting a new operational address. It stated that the Court did not make any finding on whether this constituted sufficient notice of a change in *domicilium*. It argued that this omission is material, given that the

validity of the address was central to the rescission application and the Sheriff's return noted that the business no longer operated at the old address. It was submitted that the change in *domicilium* must be evaluated in light of the evidence presented. Failure to do so is a material omission. It was submitted that procedural fairness includes proper service.

Fourth: Overemphasis on formalism over substance

- [9] It was submitted that this Court dismissed the application largely on the absence of a detailed defence, without considering the context in which the applicant was denied access to the full record. It was submitted that Reyakopele Trading acted promptly in launching the rescission application and demonstrated a *bona fide* intention to defend the matter, subject to access to a full set of documents.

Fifth: Failure to consider prospects of success holistically

- [10] It was submitted that this Court did not assess whether the underlying claim, particularly the cancellation of the agreement and the quantum of damages, "*might be*" disputed. It was submitted that even if liability is not fully denied, the extent of damages, or compliance with cancellation procedures under the National Credit Act 34 of 2005 ("*the National Credit Act*"),¹ could form triable issues. It was submitted that disputes under the National Credit Act must be

¹ This is the first time that this argument is raised. It was neither raised in the founding affidavit, nor in Reyakopele's heads of argument. In any event, Mr Peterson on behalf of Velocity Finance submitted at the hearing of the application for leave to appeal that the credit agreement is not a credit agreement as defined in the National Credit Act. This is also what is pleaded in paragraph 6 of the particulars of claim. This is therefore not something to be considered in deciding whether to grant leave to appeal.

properly ventilated, especially regarding cancellation and damages.

Sixth: Interest of justice and access to court

- [11] It was submitted that Reyakopele Trading is a small business entity that acted “*swiftly and in good faith*”. The dismissal of the rescission application without addressing the procedural constraints and factual disputes, undermines the broader interests of justice and access to court. It was submitted that access to courts is a fundamental right under section 34 of the Constitution 2006.

TEST FOR LEAVE TO APPEAL

- [12] 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.
- [13] According to Bertelsmann J in *Mont Chevaux Trust (IT 2012/28) v Tina Goosen*² 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

² *Mont Chevaux Trust (IT 2012/28) v Tina Goosen* LCC14R/2014 (unreported judgment of the Land Claims Court delivered on 3 November 2014).

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”.³ (emphasis added)

- [14] In *MEC for Health, Eastern Cape v Mkhitha*,⁴ the Supreme Court of Appeal held that:

“[16] 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.

[17] 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.”

- [15] In *KwaZulu-Natal Law Society v Sharma*,⁵ van Zyl J held at paragraph 30 that the test enunciated in *S v Smith*⁶ still holds good. In *S v Smith* at paragraph 7 the Supreme Court of Appeal held that:

“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

³ See paragraph 6.

⁴ *MEC for Health, Eastern Cape v Mkhitha*, unreported, SCA case no 1221/2015 dated 25 November 2016, 2016 JDR 2214 (SCA).

⁵ *KwaZulu-Natal Law Society v Sharma* 2017 JDR 0753 (KZP).

⁶ *S v Smith* 2012 (1) SACR 567 (SCA).

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.”⁷

- [16] In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*,⁸ the Supreme Court of Appeal held at paragraph [2] 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)

- [17] 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

- [18] The main basis upon which this Court dismissed Reyakopele Trading’s application was that it did not set out a *bona fide* defence in its answering affidavit. It seems by now to be common cause that Reyakopele Trading did not set out a *bona fide* defence in its founding affidavit. This should really be the

⁷ Id at paras 29 to 30.

⁸ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA).

end of the matter.

- [19] However, the attack is that Reyakopele Trading could not do so since it did not have the full summons when it filed the founding affidavit. The complaint is that Velocity Finance failed or refused to provide it with a copy of the papers. It is in this regard stated at paragraph 7.2 of the founding affidavit dated 19 February 2024 that: *“A comprehensive supplementary affidavit on the matter shall be prepared and be made available once we obtain, hopefully and soon, the full bundle of documents relating to the matter from Plaintiff Attorneys. At the moment we are not in possession of any other documents, information or material which can assist us at length on the matter, besides annexure ‘AY2’ and ‘AY3’”*.
- [20] Paragraphs 7.1 and 7.2 were quoted at paragraph 21 of my judgment dated 22 October 2025. It was set out in paragraph 22 that “**AY2**” is a reference to the order for default judgment. Annexure “**AY3**” is a practice note filed on behalf of Velocity Finance at the time when default judgment was granted.
- [21] I held at paragraph 22 of my judgment that the practice note deals in sufficient detail with Velocity Finance’s case against Reyakopele Trading, which should have enabled it to at least say something regarding its defence if it had one. I held that the fact that it remained silent is significant. I remain of this view. As I see it, there is no prospect that a court of appeal would find differently.
- [22] In any event, as I see it the whole access to documentation issue is a red herring. In support of its statement in the founding affidavit that Velocity refused

it access to “*the full bundle of summons*”, Reyakopele Trading relied on an email from Velocity Finance’s attorneys dated 31 August 2023. Upon scrutiny, it appears that the email does not amount to a refusal. What transpired is that Mr Yokwe forwarded an email dated 8 August 2023 he received from CaseLines showing that a change occurred in sections 16 and 17 of CaseLines to Velocity Finance’s attorneys. He requested them for access to those documents. Velocity Finance’s attorneys responded that based on the email he forwarded to them, Mr Yokwe had access to the matter in CaseLines. It was then stated that Mr Yokwe was therefore welcome to access the documents at his own leisure. It seems that nothing further transpired in this regard.

[23] The answering affidavit was filed on 4 December 2024. This set out Velocity Finance’s case in detail. Reyakopele Trading should therefore by at least this date, have been fully appraised of the case against it. Yet it did not file the further affidavit alluded to in the founding affidavit. It is common case that Velocity Finance on 24 July 2025, furnished Reyakopele Trading with a full bundle containing all the relevant papers. Yet it still, during the approximately a month before the hearing, did not file the further affidavit, or a replying affidavit. It also did not for instance bring an application for a postponed to have a further opportunity to files these.

[24] Under the circumstances, Reyakopele Trading’s first, second, fourth, fifth and sixth grounds of appeal lack merit and ought to fail.

[25] As I see it, Reyakopele third ground of appeal, i.e. the alleged failure to make a finding on the “*address evidence*”, should suffer the same fate. The alleged

evidence that I failed to consider was a utility bill dated 27 November 2020 in the name of Reyakopele Trading CC reflecting a different address.

[26] I dealt with the utility bill at paragraph 14 of my judgement. The utility bill referred to was attached as “AY6.1” to the heads of argument that I allowed Mr Yokwe to file on 25 August 2025. It was thus not placed before me under oath as part of an affidavit. Be that as it may, the utility bill at best shows that Reyakopele Trading had a business premise at a further address as at 27 November 2020. This does not support the notion that Reyakopele Trading gave notice to Velocity Finance in accordance with the credit agreement. What I said regarding service in the judgment was that since Reyakopele Trading did not file a replying affidavit, Velocity Finance’s case, including in so far as service is concerned, therefore stood unanswered. As I see it, there is not a reasonable prospect that a court of appeal would find differently.

[27] Mr Peterson for Velocity Finance asked at the hearing that I dismiss the application for leave to appeal with costs on an attorney and client scale. He submitted that this is warranted based on what was agreed in the credit agreement. He neither asked such an order at the hearing of the main application, nor in the heads of arguments filed in the application for leave to appeal. As I see it such a punitive cost order is not warranted.

[28] In the result, I make the following order.

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: 4 December 2025

Delivered and uploaded to CaseLines: 9 December 2025

Appearances:

For the plaintiff / respondent:

Adv R Peterson

Instructed by Glover Kannieapan Inc

For the defendant / applicant:

Self-represented as per its member,

Mr Mzoxolo Andrew Yokwe