



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2030/2024

In the matter between

SIBAMU BUILDING CONTRACTORS (PTY) LTD

FIRST APPLICANT

LEKGOTLA ELISHA SIBANYONI

SECOND APPLICANT

HILDA KETLOGELWE SIBANYONI

THIRD APPLICANT

and

ABSA HOME LOANS GUARANTEE

FIRST RESPONDENT

COMPANY (RF) PTY LTD

ABSA HOME LOANS GUARANTEE

SECOND RESPONDENT

Neutral citation: *Sibamu Building Contractors (Pty) Ltd and Others v Absa Home Loans Guarantee Company (RF) Pty Ltd and Another* (2030/2024) ZAFSHC 374 (25 November 2025)

Coram: MHLAMBI J

Heard: Matter disposed of without oral hearing in terms of section 19(a) of the Superior Court Act 10 of 2013.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 25 November 2025.

Summary: Application for leave to appeal – demonstration of merit or prospects of success in application for leave to appeal.

ORDER

The application for leave to appeal is dismissed with costs.

JUDGMENT

Mhlambi J

[1] This is an application for leave to appeal the whole of the judgment I handed down on 28 February 2025, in which I granted an application for summary judgment in favour of the respondent. The grounds of appeal are that the Court erred in the following respects:

‘1.1.1 finding that the applicants did not disclose a bona fide defense nor raise a triable issue.

1.1.2 In its application of *Rees and Another v. Investec Bank Limited*.

1.1.3 finding that the judgment of *Rees and Another v. Investec Bank Limited* was not distinguishable from the facts of this case.

1.1.4 finding that the deponent to the affidavit supporting summary judgment could swear positively to the facts relied on for summary judgment.

1.1.5 finding that the deponent to the affidavit in support of summary judgment had personal knowledge of the facts relied upon in the affidavit in support of summary judgment.

1.1.6 The section 129 notices sent by the respondents are considered invalid because they were withdrawn when the respondents withdrew the matter under case number 1416/2021.’

[2] The summary of the applicants’ argument, in their heads of argument, is that the facts presented by the deponent in the summary judgment application are insufficient to establish that the department has personal knowledge of those facts. The applicants were never provided with a copy of the agreement and, therefore, could not verify the claimed amounts. As a result, the applicants believe their appeal has a reasonable chance of success. Although the applicants accept that the deponent and an employee of the bank need not know every fact, it was not pleaded how the deponent in this case had personal knowledge of the facts.

[3] The respondents opposed the application and pointed out that the deponent to the summary judgment application, as an officer of the corporate entity and by virtue of her position, could rely on records in the company’s possession for her personal knowledge.

First-hand knowledge of every fact was not required, but certain relevant facts from the company's records were required to swear positively to them.

[4] Section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013, (the Act) provides that leave to appeal may only be given where the judge or judges concerned believe that the appeal would have prospects of success or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. The applicant's leave to appeal is predicated solely on the provisions of s 17(1)(a)(i) of the Act. In *Ramakatsa and Others v African National Congress and Another*,¹ it was held that the test of reasonable prospects of success postulated a dispassionate decision based on the facts and law that a court of appeal could reasonably conclude differently from that of the trial court.

[5] The appellants needed to convince the Court, on proper grounds, that they had a prospect of success on appeal. That prospect of success must not be remote, but there must exist a reasonable chance of succeeding. A sound, rational basis for the conclusion that there is a prospect of success must be shown to exist.

[6] There is no merit in the application for leave to appeal. The grounds of appeal have been dealt with in the judgment. The applicants failed to discharge the onus of showing that there is a reasonable prospect of success on appeal. The application for leave to appeal must therefore fail.

[7] I make the following order:

The application for leave to appeal is dismissed with costs.

J J MHLAMBI
JUDGE OF THE HIGH COURT

¹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31.

Appearances

For the appellant: Z Nyezi

Instructed by: Blair Attorneys, Bloemfontein

For the respondent: W J Roos

Instructed by: Botha Attorneys, Bloemfontein.