

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

Case: 7109/2021

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED: Yes.
DATE: 19 January 2026 SIGNATURE..... [REDACTED]	

In the matter between:-

PHILLIPINE KWENA TSIPA

SESILA GRACE GALANE

TULISILE MBIKO

AND

ROAD ACCIDENT FUND

1ST APPLICANT

2ND APPLICANT

3RD APPLICANT

RESPONDENT

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 19 January 2026 at 10H:00.

Heard: 28 November 2025

JUDGMENT ON LEAVE TO APPEAL

Mashifane AJ

1. The applicant brought an application for default judgment against the respondent on the ground that after having been served with summons the respondent failed to enter appearance to defend and prayed for judgment on both merits and quantum. This court in exercising its discretion refused to grant default judgment on the grounds that there were no enough evidence upon which this court could properly exercises its discretion.
2. The application for leave to appeal is governed by Section 17(1) of the Superior Courts Act 10 of 2013 which provides that leave to appeal may only be granted where the judge or judges concerned are of opinion that the appeal would have reasonable prospects of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
3. **Four Wheel Drive Accessory Distributors CC v Rattan NO 2019 (3) SASA 451 (SCA) at par [34] with reference to S v Smith 2012 (1) SACR 567 (SCA) paragraph 7** the Supreme Court of Appeal remarking on the reasonable prospects of success said the following: "Leave to appeal should be granted only where there is a sound rational basis for the conclusion that there are prospects of success on appeal" [**my emphasis**]. This calls upon the Court deciding on the application to consider whether there is sound rational basis that another Court faced with the same facts would arrive at a different conclusion. The use of the word would as opposed to could is indicative of the highest measure of certainty that another court will differ with the court whose judgment is sought to be appealed against.
4. The question that is before the Court is whether the refusal to grant default judgment viewed within the facts this case put the matter to finality. Application for default judgment is on its own an interlocutory application and

like refusal to grant summary judgment it does not bring the matter to finality and therefore not appealable.

5. During the hearing of the application for default judgment the Court specifically request the applicant's legal representative for further evidence and when the matter was recalled the response was that his instructions were to proceed with the application as per papers before the Court. It was not his instructions or argument that the evidence the Court is requesting cannot be traced or located. The applicants submitted as evidence that the deceased died due to injuries sustained out of motor vehicle accident death certificate, accident report and statement by the police officer who arrived at the scene after the accident had occurred. Death certificate proves only that deceased died due to unnatural causes. The registration number of the motor vehicle alleged to have involved in the accident contained in the accident report is not same as the one contained in the statement by the police officer who arrived first at the scene. This registration number was given to him by a third person. There is no reason why he did not approach the driver of the motor vehicle which was parked not far from the scene of accident.
6. It was submitted on behalf of the applicants that hence the other evidence which the Court requested cannot be traced or is not available then that puts the matter to finality because there is nothing further the applicants can do. In my opinion the failure by the applicant for default judgment to produce direct evidence necessary to prove that the deceased died because of motor vehicle accident does not put them matter to finality. The question is whether the applicant is precluded for setting down the matter for trial and not whether the applicant would be able to bring new evidence before the trial court.
7. One of the grounds of appeal is that the Court incorrectly applied a wrong standard of proof in that in my judgement I held that the type of evidence before me was circumstantial and that the general principle dictates that the inference drawn should be the only reasonable inference to be drawn. Correctly submitted on behalf of the applicant this standard I s only applicable in criminal cases. In civil matters the inference sought to be drawn must be

consistent with all the proved facts, if it is not, then the inference cannot be drawn.

8. Though I agree with submission the Court applied incorrect standard of proof I am not convinced there is a reasonable prospect of success on appeal. The applicant's application was based on hearsay evidence and there was no application to have the hearsay evidence accepted as evidence before the court. The description of the motor vehicle alleged to have been involved in the accident differs materially. As at the time of hearing of the application for default judgment no reasons were given for failure to present evidence the court requested.
9. Leave to appeal should not be granted to see if another court may arrive at a different conclusion. The Court granting leave must be convinced that there are reasonable prospects of success and the appeal Court would arrive at a different conclusion. The phrase reasonable prospects of success apply to both merits and procedure. It will be procedurally incorrect and an abuse of appeal process for this Court to grant leave to appeal to the Full Bench or Supreme Court of Appeal whereas this Court did not dismiss the applicant for default or grant an absolution from instance.
10. In their application for default judgment and as repeated in this application the applicants repeatedly referred this Court to the Constitutional Court judgment in **BALISO V FIRST RAND BANK LTD t/a WESBANK**¹. The applicants submit that this case is an authority that there is no need to hear evidence on merits if the claim is unopposed. This submission is unfortunately misplaced because at first the Constitutional Court was not called upon to decide on requirements of a default judgment brought under Rule 31(2) (a) of the Uniform Rules. The comment made by the Constitutional Court did not remove the discretion the trial Court enjoys under Rule 31 (2) (a).
11. In conclusion, I find that the refusal to grant default judgment is not appealable as it does not bring the matter to finality and there is no other compelling circumstance upon which the application should be granted.

¹ Baliso v First National Bank LTD t/a Wesbank 2017(1) SA 292 (CC) at paragraph 12

ORDER

1. The application for leave to appeal is dismissed
2. There is no costs order.



Mashifane AJ

Acting Judge of the High Court

Limpopo Division, Polokwane

APPEARANCES

For the applicant: Mr Diamond

Instructed by Diamond Attorneys.

POLOKWANE HIGH COURT