REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: **111486-2025**

1.NOT REPORTABLE: NO
2.NOT OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

In the matter between:

OLD iSTUDY4 (PTY) LTD	Applicant (In the leave appeal application)
And	
SRE RENTALS (PTY) LTD	Respondent (In the leave appeal application)

In re:

SRE RENTALS (PTY) LTD Applicant

And

OLD iSTUDY4 (PTY) LTD First Respondent

CUZEN RANDEREE DYSAI INC Second Respondent

BROLL AUCTION AND SALES (PTY) LTD Third Respondent

RIAZ BADAT Fourth Respondent

Neutral Citation: *Old iStudy4 (Pty) Ltd v SRE Rentals (Pty) Ltd (111486/2025)* **[2026] ZAGPJHC** ---- (27 February 2026)

Coram: Khaba AJ

Heard: 20 February 2026

Delivered: 27 February 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 27 February 2026.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold – leave to appeal refused.

JUDGMENT

APPLICATION FOR LEAVE TO APPEAL

KHABA AJ:

[1]. I shall refer to the parties as referred to in the original main application. This is an application for leave to appeal against the whole of the judgment and order that I granted on 29 January 2026 *("the order")* in the unopposed motion Court in favour of the applicant SRE Rentals (Pty) Ltd *("SRE Rentals")* and the written reasons handed down on 12 February 2026 *("the reasons") jointly ("the judgment")*. Having considered the matter, I ordered the second respondent Cuzen Randeree Dysai Inc a law firm practising as such to pay the amount of R 11 850,000.00 currently held in its trust account, being the purchase for the immovable property back to the applicant.

[2]. Aggrieved by this decision, on 30 January 2026, the first respondent requested written reasons for the order in terms of Rule 49(1)(c). Simultaneously with the request for written reasons, the first respondent filed this application for leave to appeal to the Full Bench of this Division alternatively the Supreme Court of Appeal. The written reason were delivered on 12 February 2026. The written reasons are comprehensive, and I stand by them as set out therein. The applicant opposes this application for leave to appeal.

[3]. The factual matrix of this matter is fully set out in my written reasons handed down on 12 February 2026, which I do not intend to repeat in this judgment, save to highlight the salient features relevant to this judgment. In summary, the applicant and the first respondent concluded a written sale agreement, subsequently amended by an addendum, for the purchase of an immovable property in Vereeniging for the total purchase price of R 11 850,000.00. The

purchase price was paid in full by the applicant and was held in the second respondent's trust account, the conveyancing attorneys appointed in terms of the written sale agreement.

[4]. The second respondent confirmed that it holds the purchase price in a section 86 investment account. The second respondent requested a joint instruction from the purchaser and the seller to release the purchase price and accrued interest, failing which the second respondent, will continue to hold the funds in trust to safeguard both parties rights and interests and it will continue to do so until a Court orders the second respondent to release the funds to a particular party.

[5]. The first respondent breached the sale agreement by failing to obtain the rates clearance certificate a prerequisite to pass transfer of the property into the applicant's name despite repeated demands and notices of breach.

[6]. The letters dated 22 August 2024; 11 March 2025 and 25 June 2025, the applicant lawfully cancelled the written sale agreement due to the first respondent's material breach. In the alternative, the first respondent repudiated the written sale agreement, which repudiation has been accepted by the applicant. The cancelation was communicated to all the parties.

[7]. On 11 July 2025, the applicant launched the main application. The main application sought an order directing the second respondent to repay the purchase price held in the second respondent's trust account to the applicant.

[8]. The application was duly served upon all the respondents. The first respondent filed its notice of intention to oppose the main application, which notice was served upon the applicant's attorneys on 14 August 2025. I interpose here to mention that both parties agreed to exchange pleadings in by email. The

second respondent did not oppose the main application. The third respondent filed a notice to abide. The fourth respondent did not oppose the main application. Critically, the first respondent failed to deliver an answering affidavit to the main application despite having more than five months to do so.

[9]. The main application was enrolled by the applicant's attorneys for hearing on 29 January 2026 on the unopposed motion Court roll. The notice of set down was duly served on all the respondents by email.

[10]. On 28 January 2026, a day before the hearing of the applicant's main application in the unopposed motion Court. The first respondent launched its own postponement application, which was also set down for hearing on 29 January 2026 in the unopposed motion Court roll. The first respondent in its notice of motion sought an order for the postponement of the applicant's main application *sine die* alternatively the removal of the applicant's main application from the unopposed motion Court to the opposed motion Court roll.

[11]. The grounds advanced by the first respondent in its postponement application was the alleged existence of a statutory moratorium under section 133 of the Companies Act 71 of 2008, arising from the business rescue application launched against the first respondent on 23 December 2025 at the Durban High Court under case number: 2025-249571. A preliminary contention that the relief sought against the second respondent was legally incompetent.

[12]. The applicant delivered its notice of intention to oppose the first respondent's postponement application and filed an answering affidavit and its comprehensive heads of arguments.

[13]. The first respondent failed to file its replying affidavit to address the applicant's answering affidavit and failed to file any heads of arguments in support of its

own application for postponement. As a result, the substantive arguments and written submissions before Court were those of the applicant. In the absence of any substantive legal and factual challenge from the first respondent's side, the Court was compelled to decide the matter on the papers and arguments as presented by the applicant.

[14]. The postponement application was brought at the proverbial eleventh hour, a day before the hearing of the main application, despite the first respondent having been aware of the set of the applicant's main application since 13 January 2026 in the unopposed motion Court. The first respondent's explanation is that it was awaiting the outcome of the business rescue application filed on 23 December 2025 at the Durban High Court under case number: 2025-249571. The business rescue application post- dated the applicant's main application which was set down several weeks. The first respondent could have taken steps earlier to either file its opposition or apply for a postponement.

[15]. The first respondent's primary argument was that the business rescue application triggered a moratorium under section 133 of the Companies Act, which prohibits legal proceedings against a company in relation to any property belonging to the company, or lawfully in its possession.

[16]. This argument was fundamentally misconceived and lacked any prospects of success for the following reasons, as generally cogently argued Mr. Koralia, counsel who appeared for the applicant. The sale agreement had been lawfully cancelled due to the first respondent's breach. Upon cancellation, the first respondent's right to the purchase price held in second respondent's trust account ended. The funds in the second respondent's trust account were not property *"belonging to" or lawfully in the possession of"* the first respondent. The second respondent hold such funds in a fiduciary capacity, akin to trustee, for the party ultimately entitled to them. Following, the cancelation, the entitlement reverted to the applicant. The first respondent's postponement

application conspicuously failed to engage with that the fact of cancellation, a fatal omission that undermined the first respondent's entire case.

[17]. The second respondent's secondary argument is that a claim for payment must lie against the principal debtor, the first respondent and not its agent, the second respondent ignored the practical reality and the nature of the relief sought. The applicant is not seeking to *"attach"* the property of the first respondent. It is seeking the return of its own money currently held in the second respondent's trust account, whose mandate to retain those funds had terminated with the cancellation of the underlying sale agreement. An order directing the stakeholder to release the funds is a competent and common form of relief in such circumstances, especially where, as in this matter the stakeholder (second respondent) has expressly indicated that it requires a Court Order to release the funds held in trust.

[18]. The granting of a postponement would have caused significant prejudice to the applicant, who had been out of substantial sum of money for years due to the first respondent' breach and who has not followed due process throughout. The funds remain secure in the second respondent's trust account. The first respondent would suffer no prejudice from the refusal of the postponement application, as it failed to advance any substantive opposition to the main application despite ample opportunity.

[19]. A critical factor in the decision was the first respondent's failure to file an answering affidavit in the main application. A party cannot in good faith, seek to move a matter to the opposed motion Court, when it has not filed no papers in opposition. The first respondent's counsel attempt to do so, was an abuse of Court process. The first respondent had since August 2025 to explain its breach of the contract or why the cancellation was invalid. The first respondent's silence on the merits in the main application, while seeking an indefinite delay, weighed heavily against granting the indulgence sought.

[20]. The points raised by counsel for the first respondent were unmeritorious and appeared dilatory. The main application was properly enrolled for hearing in the unopposed motion Court on 29 January 2026. The first respondent's counsel failed to file heads of arguments on merits in the postponement application, despite the Practice Directives, left the Court with no substantive counter argument to consider. A Court cannot countenance a strategy of avoiding merits hearing by raising weak procedural points at the eleventh hour.

[21]. On undisputed facts presented by the applicant, which the first respondent choose not to contest, the applicant provided its facts. The first respondent failed to establish any grounds for the indulgence of a postponement. Its application was late, its explanation unsatisfactory, and its prospects of success on the purported defences were nil.

[22]. On the merits of the main application, which were unopposed on the papers, the applicant presented a clear, cogent, and undisputed case. The applicant demonstrated that a valid agreement existed; full compliance with its obligations; a material breach by the first respondent; a lawful cancellation of the written sale agreement and a consequent entitlement to the return of the purchase price held in the second respondent's trust account. No defence having been raised in the main application and the papers establishing the applicant's clear right to the relief sought.

[23]. The first respondent raised some eight grounds of appeal. Stated broadly, the first respondent, first contended that the Court erred alternatively misdirected itself by failing to adjudicate upon the first respondent's application for postponement. Second, the first respondent contended that this Court erred by granting the order sought by the applicant. Third, the first respondent contended that this Court erred by granting an order on the unopposed roll, whilst not only the applicant's application was opposed, but whilst the first respondent's application for postponement was opposed. Fourth, it was submitted that this Court erred by having found that service of the applicant's

notice of set down was perfected alternately by not having found that such service was imperfect, in circumstances where the applicant's notice of set down of the application was not served on the first respondent's care of address (being the elected address for service). Fifth, it was submitted that this Court erred by having granted an order as against the first respondent, despite the first respondent being subject to a live business rescue application in the Durban High Court under case number: 2025-249571. Sixth, the first respondent contend that this Court erred by having granted an order contrary to the moratorium provided to the first respondent by statute. Seven, it was submitted that this Court erred by having granted an order to the detriment of the first respondent's creditors alternatively having granted an order that creates a preference to creditors. Lastly, it was submitted that the Court erred in granting the order as sought by the applicant, in circumstances where no order or finding has been made as regards the cancellation, if any, of the sale of the property.

[24]. The first respondent contended that this application for leave to appeal raises several issues, and there are, with respect compelling reasons why leave to appeal should be granted. The first respondent contended the reasons compelling the granting of the leave to appeal, and for the appeal to be heard, are that the order in question closes the Court's doors to the first respondent to ventilate fully the issue between the parties, and that the order contravenes the business rescue moratorium provided by statute to the first respondent.

[25]. The first respondent contended the failure to adjudicate the postponement application, this submission is without merit. I heard full arguments on the postponement application. In my written reasons, I dealt extensively with the application from paragraphs 22 to 33, analysing the legal principles, the lateness of the application, the unsatisfactory explanation, and the lack of prospects of success. The refusal of the postponement application was a necessary precursor to granting the order in the main application. It is axiomatic that the order I granted is a refusal of the postponement. There is no ambiguity or omission in this regard.

[26]. The first respondent further contended that there are reasonable prospects of success, and that there are compelling reasons why leave to appeal should be granted. During argument, emphasis was placed on these compelling reasons.

[27]. Nothing new has been raised by the first respondent in this application for leave to appeal. In my written reasons, I have dealt with most, if not all of the issues raised by the first respondent in this application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate what I have already said in the paragraphs above.

[28]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another Court can come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23^{rd} of August 2013. Leave to appeal may only be granted where a Court is of the opinion that the appeal would have reasonable prospects of success, which prospects of success are not too remote. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.

[29]. An application for leave to appeal faces a higher threshold than under the repealed Supreme Court Act. Leave to appeal may only be given where a judge concerned is of the opinion that the appeal would have a reasonable prospect of success. The test is simply whether there are any reasonable prospects of success in the appeal. It is not whether a litigant has arguable case or a mere possibility of success.

[30]. It is trite that if a Court is unpersuaded of the prospects of success, it must still enquire into whether there is compelling reason to entertain the appeal. However, the merits remain vitally important and are often decisive. In considering the existence of compelling reasons as envisaged by s 17(1)(a)(ii) of the Act, I am also not persuaded that such reasons exist in this matter, when considering in the context of prospects of success on the merits.

[31]. In *Ramakatsa and Others v African National Congress and Another*[1], the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a court of appeal 'could' reasonably arrive at a conclusion different to that of the trial court. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[32]. The ratio in *Ramakatsa* simply followed *S v Smith* 2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

> 'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. 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 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.In *Mont Chevaux Trust v Tina Goosen*[2], the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*[3]. In that matter the SCA remarked

[1] *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

[2] *Mont Chevaux Trust v Tina Goosen,* LCC 14R/2014 (unreported).

[3] *Notshokovu v S,* case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Court Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*[4]. The word "would" in section 17 (1)(a)(i) of the Superior Courts Act No: 10 of 2013 has been held to denote "*a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against and that the test for leave to appeal to be successful is more stringent than the traditional test.*" In *Notshokovn v S*[5] the Supreme Court of Appeal held as follows on the test "*...an appellant, on the other hand faces a higher and stringent threshold in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959.*"

In *MEC for Health Eastern Cape v Mkhintha and Another*[6], Schippers AJA provided the following guidance on the test:

"[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 Supreme Courts Act 10 of 2013 makes it 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

[4] *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

[5] *Notshokovu v S (157/15) [2016] ZASCA 112 (7 September 2016)*

[6] *MEC for Health, Eastern Cape v Mkhitha and Another (1221/2015) [2016] ZASCA 176 (25 November 2016).*

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."

[33]. I am not persuaded that the issues raised by the first respondent in this application for leave to appeal are issues in respect of which another Court is likely to reach conclusions different to those reached by me. I am therefore of the view that there are no reasonable prospects of another Court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The first respondent has failed to demonstrate that another Court would reach a different decision and that the first respondent should be granted leave to appeal. In light of the all the circumstances alluded above, it is my view that the first respondent has not presented and facts demonstrating that it has any prospects of success; therefore, it would not serve any interest of justice to grant leave to appeal to the first respondent.

[34]. Having considered the papers filed on record and the submissions made by the parties, it follows that the application for leave to appeal, must therefore fail. There is no reason to deviate from the normal principle that costs follow the result. I am not persuaded that a punitive costs order is warranted, as sought by the applicant. Considering the issues and complexities which arise in this application, costs of counsel on scale B is warranted.

Order

[35]. In the circumstances, the following order is made:

1) The first respondent's application for leave to appeal is dismissed with costs including costs of counsel on scale B

[redacted]

KHABA AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

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Date of Hearing:	20 February 2026
Date of Judgment:	27 February 2026