**IN THE HIGH COURT OF SOUTH AFRICA**

**MPUMALANGA DIVISION, MIDDLEBURG**

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| (1) Reportable: No<br>(2) Of interest to other judges: No<br>(3) Revised: yes<br><br>11/03/2026 [redacted]<br>Date Signature |

Case NO:**5101/2023**

In the matter between:

**ENGEN PETROLEUM LIMITED** Applicant

And

**OCEANSIDE TRADING 441 CC** First Respondent

**THEODOR WILHEM VAN DEN HEER N.O** Second Respondent
(duly appointed business rescue practitioner
Of Tradewith 55(Pty)Ltd in business rescue)

**DANIEL TERBLANCHE N.O** Third Respondent
(duly appointed business rescue practitioner
Of Tradewith 55(Pty)Ltd in business rescue)

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JUDGMENT- LEAVE TO APPEAL

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LESO AJ,

## INTRODUCTION

[1] The applicant seeks leave to appeal against the judgment and order delivered on 16 January 2026, in terms of which the applicant's application for payment against the first respondent (Oceanside Trading for 41 CC) was dismissed with costs. The application was dismissed after the Court upheld a point of law raised in terms of Rule 6(5)(d)(iii), namely that the founding affidavit did not sustain the relief sought and failed to disclose a cause of action.

[2] The first respondent opposed the application for leave to appeal and the reasons for opposition shall later follow.

## FACTUAL BACKGROUND

[3] The applicant supplied fuel to Tradewith 55 (Pty) Ltd in business rescue, which ceded its book debts as security. Tradewith's debtor included the first respondent (Oceanside Trading for 41 CC). The applicant claimed the first respondent owed two specific amounts.

[4] The first respondent opposed the application and delivered a notice in terms of Rule 6(5)(d)(iii), raising a point *in limine* to the effect that the averments contained in the applicant's founding affidavit fail to sustain the relief sought in the notice of motion. In particular, the first respondent contended that the applicant failed to establish any underlying cause of action against it, in that no primary evidence was placed before the court to demonstrate the alleged indebtedness.

[5] The court found that the point *in limine* raised by the respondent is accordingly well-founded and is dispositive of the application.

## GROUNDS FOR APPEAL

[6] The applicant advances several grounds of appeal as follows:

6.1 that this Court erred in upholding the Rule 6(5)(d)(iii) objection in the absence of an answering affidavit,

6.2 that in refusing to admit a further affidavit, and

6.3 In finding that the founding papers failed to establish a cause of action.

[7] The applicant complained about the fact that the first respondent did not file an answering affidavit and thus did not challenge any of the allegations contained in the founding affidavit.

[8] The applicant argued that the court erred in requiring detailed proof of the underlying debt at the founding stage wrongly refused to admit the applicant's replying and further affidavits, which responded to procedural and registration-number issues and the dismissal was unjustified because the applicant's factual allegations, supported by annexures, indicated a sufficient cause of action. Counsel for the applicant submitted that the applicant's affidavits were relevant, and the refusal was an improper exercise of discretion, potentially prejudicing the applicant's case. The court misapplied its discretion by failing to properly consider applications for leave to admit affidavits and by giving undue weight to procedural formalities.

[9] The applicant further submitted that the court conflated facts that should have been treated as material facts necessary to establish a ceded claim.

[10] Applicant relied on the judgment in the Engen Petroleum Limited v Macla Commodities (Pty) Ltd and Others 2026 JDR which was heard at the Gauteng Division, where Condonation of the late filing of the replying affidavit is granted. The respondent's counterclaim was dismissed. The first respondent is ordered to pay the sum of R141 719.72 plus interest at a prescribed rate from 19 April 2023 to the date of payment.

[11] According to the applicant, it was not necessary for the applicant to prove the underlying cause of action, including the debt allegedly owed by the first respondent to the cedent.

[12] It is submitted that the appeal has a reasonable prospect of success on those issues, alternatively that there is a compelling reason why the appeal should be heard within the meaning of section 17(1)(a) of the Superior Courts Act 10 of 2013.

APPLICABLE LEGAL PRINCIPLES

[13] In terms of section 17(1) of the Superior Courts Act 10 of 2013, leave to appeal may only be granted where the court is of the opinion that the appeal would have a reasonable prospect of success, or where there are compelling reasons why the appeal should be heard.

[14] The court emphasizes that leave to appeal should only be granted if the appeal has a reasonable prospect of success or other compelling reasons exist. That is subject to the court's discretion and the threshold in terms of section 17(1) of the Superior Courts Act. The standard now requires a higher degree of certainty that the appeal could succeed, as established in case law like *Mont Chevaux Trust v Goosen and 18 Others [2014] ZALCC 20* this case involved an eviction under the Extension of Security of Tenure Act 62 of 1997. The Land Claims Court established that the threshold for granting leave to appeal was raised by the Superior Courts Act and held that 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.

[15] *The case of Caratco (Pty) Limited v Independent Advisory (Pty) Limited ZAGPPHC* 967 pertains to the interpretation of Section 17(1)(a)(i) of the Superior Courts Act, requiring a higher degree of probability of success on appeal. This case is frequently referenced alongside *Mont Chevaux* to reinforce the stricter standard for leave to appeal.

EVALUATION

[16] In my view, the first two grounds advanced by the applicant, namely the refusal to admit a further affidavit and the upholding of the Rule 6(5)(d)(iii) point, do not, on their own, demonstrate reasonable prospects that another court would reach a different conclusion. The refusal to admit a further affidavit involved the exercise of a

judicial discretion, and no basis has been shown to justify interference with that discretion.

[17] The grounds of leave to appeal would not stand the traditional test for leave to appeal because, on the issue of rejection of further affidavit, the court exercised its discretion, judicially as it ought to. In relation to how the court dealt with rule 6(5)(d)(iii) I am of the view that another court would not come to a different conclusion. Rule 6(5)(d)(iii) allows raising legal points without an answer, and the court correctly applied this.

[18] The appellant argues that the impugned decision appears to impose or endorse a legal requirement that when enforcing accession against the cedent, the cessionary must have knowledge of and be able to prove the full underlying cause of action between the cedent and the debtor, including facts and contractual matrix to which the cessionary was not a party and may not have had access to. This submission is totally incorrect because the court noted that the cessionary does not have to prove a contract as he was not a party. The proposition by the applicant that the court found that the applicant ought to plead and prove the entire underlying contractual relationship between the cedent and the debtor is incorrect.

[19] In paragraph 20 of the judgment, the court deals with the onus of proof and the court found that a cession does not dispense with the requirement to establish the existence, nature, and enforceability of the underlying debt. The applicant, as cessionary, bears the onus of proving that a valid and enforceable debt existed in favour of the cedent and that such debt falls within the scope of the cession relied upon.

[20] Similar to this case, in *Macla Commodities (Pty) Ltd* the applicant conducts its business as a seller of fuel and related products. It avers that it supplied fuel and related products to Tradewith. Tradewith provided the applicant with a cession of book debts as security for the due fulfilment of, among other things, its payment obligations towards the applicant, in respect of fuel sold and delivered. Tradewith was placed into business rescue by an order of court on 4 May 2023. At the time of being placed into business rescue, Tradewith was indebted to the applicant in the sum of R169 million. The applicant avers that the first respondent is one of Tradewith's debtors and that it

is indebted to Tradewith in the sum of R141 719.72, which it is claiming from the first respondent in terms of the cession of book debts.

[21] In both cases, Engen is claiming payment on the basis of the existence of the book of debt by Oceanside to the cedent, Tradewith.

[22] The judgment of above does not bind me, in any event, the applicant was found to have been amplified in the answering affidavit and the applicant explained why it contended the amount claimed was due. Senyatsi J said the following *'Having considered the authority on the enforcement of the cession of book debts, this court is of the view that there is not justifiable ground to depart from the Flotank decision. This is so because contrary to the contention that the applicant in this case failed to make out a case in its founding papers and attempted to make out a case in the replying affidavit, the applicant amplified its case based on the answering affidavit and explained why it contended that the amount was due to it by the first responden*t.

[23] I reject the applicants' proposition that the matter raises an important and recurring question concerning the proper enforcement of cessions of book debts in *securitatem debiti*. The extent to which a cessionary must establish the underlying debt between the cadent and the debtor when enforcing the ceded claim has been made clear and of the view that another court would not come to a different conclusion.

[24] In these circumstances, I am not satisfied that compelling reasons exist within the meaning of section 17(1)(a)(ii) of the Superior Courts Act for the appeal to be heard.

CONCLUSION

[25] The discretion to reject further affidavits was exercised properly, even if admitted, the applicant still failed to prove the debt.

[26] The judgment was sound and it does not undermine the enforceability of cessions of book debts, and no merit exists for an appeal.

[27] The applicant's five grounds lack merit and do not meet the threshold for appeal.

WHEREFORE, THE FOLLOWING ORDER IS MADE:

**Order**

[28] The following order is made:

1. Leave to appeal is dismissed.
2. The Applicant to pay the first respondent's costs, including the costs of counsel on scale c.

[redacted]

JT LESO
Acting Judge of the High Court

Heard : 09 March 2026

Delivered: 11 March 2026

*(* **The judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines system of the Mpumalanga Division, Middleburg Local Seat**)

**APPEARANCES**

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