



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

Not reportable

Case no: 4343/2021

In the matter between:

INGEROP SOUTH AFRICA (PTY) LTD

APPLICANT

and

BLOEM WATER

FIRST RESPONDENT

THE MINISTER OF WATER AND SANITATION

SECOND RESPONDENT

IN RE:

INGEROP SOUTH AFRICA (PTY) LTD

APPLICANT

and

BLOEM WATER

FIRST RESPONDENT

THE MINISTER OF WATER AND SANITATION

SECOND RESPONDENT

Neutral citation: *Ingerop South Africa (Pty) Ltd v Bloem Water and Another* (4343/2021) [2026] ZAFSHC 232 (8 April 2026)

Coram: VAN ZYL J

Heard: 20 June 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 8 April 2026.

Summary: Leave to appeal – s 17(1)(a) of the Superior Courts Act 10 of 2013 – reasonable prospect of success – *lis pendens* – review application – acknowledgment of debt.

ORDER

1 Leave to appeal is granted to the applicant to appeal to the Full Court of this Division, against the whole of the judgment and order issued under the abovementioned case number.

2 The costs of the application for leave to appeal are costs in the appeal.

JUDGMENT

Van Zyl J

[1] This is an application for leave to appeal.

[2] The applicant ('Ingerop') previously approached Court by means of application proceedings ('the main application') in which it sought relief that judgment be granted against the first respondent ('Bloem Water') for payment in the amount of R35 102 773.17 (including VAT), together with interest thereon and payment of the costs of the application. In addition, to opposing the main application on its merits, Bloem Water also raised a point *in limine* of *lis pendens* with reference to a review application which Bloem Water instituted against Ingerop.

[3] Bloem Water consequently requested an order that Ingerop's main application be stayed pending the final determination of the review application.

[4] I subsequently made the following order in the main application:

'1. The point *in limine* of *lis pendens* is upheld and the application is stayed pending the final adjudication of the review application issued under case number 5403/2022.

2. The costs of the application stand over for later adjudication.'

[5] The present application is an application by Ingerop for leave to appeal to the Full Court of this Court against the whole of the judgment and order delivered and issued in the main application.

Legal principles *re* leave to appeal

[6] Section 17(1)(a) of the Superior Courts Act 10 of 2013 ('the Act'), determines as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a)(i) the appeal *would* have a reasonable prospect of success or

(ii) if there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. . . '(My emphasis.)

[7] 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* [2016] ZAGPPHC 489 para 25, the court held that the Act has raised the bar for granting leave to appeal and in this regard it referred to the judgment of *The Mont Chevaux Trust (IT2012/28) v Tina Goosen and 18 Others* 2014 JDR 2325 (LCC), where the following was stated:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court *might* come to a different conclusion, see *Van Heerden v Cronwright and Others* 1985 (2) SA 342 (T) at 343H. 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.' (My emphasis.)

See also *Rohde v S* [2019] ZASCA 193; 2020 (1) SACR 329 (SCA) para 8 and *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another* [2020] ZAGPPHC 311 para 4.

[8] In *Municipality of Thabazimbi v Badenhorst* [2024] ZAGPPHC 195 para 9, the court also dealt with the more stringent test for an application for leave to appeal and held, *inter alia*, as follows:

'[9] A possibility and discretion were therefore, in the words of the legislation and consciously so, amended to a mandatory obligatory requirement that leave may not be granted if there is no reasonable prospect that the appeal will succeed. It must be a reasonable prospect of success; not that another Court may hold another view.

Notice of application for leave to appeal

[9] The applicant's notice of application for leave to appeal sets out the grounds upon which the application is based. I deem it apposite to repeat same herein:

1.1 The Honourable Court erred in not having regard to the fact that these proceedings, the Application seeking compliance with the acknowledgment of debt, were instituted well before the review proceedings. Accordingly, there was at the time no suit that had started before another Judge involving the same parties. The exception of *lis pendens* was in law not available to the First Respondent;

1.2 The Honourable Court erred in holding that the dispute forming the subject matter of this application is the same as the dispute forming the subject matter of the review proceedings. In so doing the Court failed to have regard to the legal nature of the acknowledgment of debt, being a new obligation that co-exists with the original obligation under the agreement concluded between the parties;

1.3 The Honourable Court erred in not having sufficient regard to the fact that the issues to be dealt with in the review proceedings are the alleged unlawful award of a contract, whereas this application concerns itself with the failure by the First Respondent to comply with the two acknowledgments of debt given by it;

1.4 The Honourable Court erred in equating the alleged fact that the review application may impact on the relief sought in that application with the legal requirement for *lis pendens*, the same parties, based on the same cause of action, in respect of the same subject matter. The legal requirements for *lis pendens* are distinct and different to that relied upon by the First Respondent in the present instance, and as set out in paragraph 91 and 92 of its affidavit;

1.5 In upholding the exception of *lis pendens*, the Honourable Court failed to have due regard to the fact that until set aside, on the assumption that the review may eventually succeed, the award and extension of the contract concluded between the parties exist in law and in fact. The acknowledgements of debt relied upon were provided while the contract concluded between the parties exists in law and in fact.'

Consideration of the application for leave to appeal

[10] I have duly considered the abovementioned grounds of the application for leave to appeal, in conjunction with the oral arguments which were presented to me on behalf of both parties and the submissions advanced in the heads of argument filed on behalf of the respective parties.

[11] When so considered and when taking a dispassionate look at the facts and the applicable law, I conclude that there is a reasonable prospect that another Court would come to a different conclusion and that leave to appeal should therefore be granted.

Costs

[12] There is no reason why the usual order pertaining to the costs of an application for leave to appeal should not be issued in the present matter.

Order

[13] The following order is made:

- 1 Leave to appeal is granted to the applicant to appeal to the Full Court of this Division. against the whole of the judgment and order issued under the abovementioned case number.
- 2 The costs of the application for leave to appeal are costs in the appeal.



C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances:

For the applicant:

A J Troskie SC

Instructed by:

Honey Attorneys, Bloemfontein

For the first respondent:

MC Makgato with V Qithi

Instructed by:

Symington & De Kok Attorneys, Bloemfontein.