

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **23229/18**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>02 APRIL 2026</u>	
DATE	SIGNATURE

In the matter between:

ELLIS STRUCTURAL AND CIVIL ENGINEERS CC

Applicant/Plaintiff

and

EGAN PROPERTY GROUP (PTY) LTD

Respondent/Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **02 April 2026**.

JUDGMENT

KUBUSHI, J

- [1] The applicant (the plaintiff in the Court below) applies for leave to appeal to the Supreme Court of Appeal against the whole of the judgment and order granted in the Court below on 8 July 2025 in terms whereof the respondent's (the defendant in the Court below) special pleas of prescription against the applicant's 1st, 2nd, 3rd and 5th claims, as well as, the claim in paragraph 23.1 of the particulars of claim were upheld, inclusive of the cost order granted in favour of the respondent. The respondent is opposing the application.
- [2] Leave to appeal is sought in terms of the provisions of Section 17(1)(a)(i) and (ii) of the Superior Courts Act, Act 10 of 2013 (the Act) on the ground that there are reasonable prospect of success that the appeal would succeed and that there is some other compelling reason why the appeal should be heard. The parties are agreed on the principles that apply to the test for granting of leave to appeal, that is, 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.¹
- [3] From reading of the applicant's heads of argument and oral argument tendered in court, the applicant has not made out a case of "some other compelling reason" as contemplated in section 17(1)(a)(ii) of the Act. The applicant in its attempt at making out a case for reasonable prospects of success on appeal as envisaged in section 17(1)(a)(i) of the Act, also, fails dismally, as will appear hereunder.
- [4] The grounds on which the applicant relies as gleaned from the application for leave to appeal may be categorised as follows:
- 4.1 Paragraphs 1 - 8 contend that the Court erred in finding that the debt was due and the running of prescription was not deferred until the applicant had invoiced the respondent.

¹ *MEC for Health, Eastern Cape v Mkhita and Another* 2016 ZASCA 176 at para 16 - 17.

4.2 Paragraphs 9 - 16 address the applicant's argument that prescription was interrupted during June 2015.

4.3 Paragraphs 17 - 22 deal with the plaintiff's argument that prescription was interrupted on 13 May 2016.

[5] These aspects were dealt with by the Court below comprehensively and extensively in its judgment and does not require a repeat in this judgment. The Court below relied in its judgment on the legal principles established in the Constitutional Court judgment in *Trinity Asset Management (Pty) Limited v Grindstone Investments 132 (Pty) Limited*,² in respect of the aspect of when the debt became due and the running of prescription, and the judgment of the Supreme Court of Appeal in *Road Accident Fund v Mothupi (Mothupi)*³ and the *Cape Town Municipality v Allie NO* judgment,⁴ in respect of the aspect of interruption of prescription. It is not in dispute that these principles have been properly applied.

[6] What seems however to be an issue for the applicant is the findings of fact by the Court below and/or the manner in which the Court below interpreted the agreements which were the subject of contention at trial. The challenge for the applicant is that it does not in its application for leave to appeal nor in its argument identify any factual finding by the Court below which it says would be overturned on appeal. It does not behove the applicant to merely make the same arguments that were made at trial and hope for a different outcome. What the applicant ought to have done, was to point to the relevant specific findings of the Court below and explained why those findings would be overturned by an appeal court. This it failed to do either in the application for leave to appeal or in argument before this Court. Having not done so, it failed to establish any reasonable prospects that it would succeed on appeal on any of the ground relied upon.

² 2018 (1) SA 94 (CC).

³ 2000 (4) SA 38 (SCA).

⁴ 1981 (2) SA 1 (C) 7F-G which was quoted with approval in *Mothupi*.

[7] In the circumstances, the application for leave to appeal falls to be dismissed with costs on scale C.

Order

[8] The application for leave to appeal is dismissed with cost on scale C.


E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant: Adv D Prinsloo

For the Respondent: D A Turner SC

Date of the hearing: 30 March 2026

Date of judgment: 02 April 2026.