



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

CASE NO: 2024-100304

DATE: 7 MAY 2026

In the matter between:

FIRSTRAND BANK LIMITED

Applicant

and

MARK FRAME

First Respondent

JULIAN FRAME

Second Respondent

Neutral Citation: *FirstRand Bank v Frame and Another (2024-100304)* [2026]
ZAGPJHC --- (7 May 2026)

Coram: Adams J

Heard: 7 May 2026

Delivered: 7 May 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 11:30 on 7 May 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 – Another compelling reason for leave to appeal to be granted (s 17(1)(a)(ii)) – the decision sought to be appealed against involves an important question of law – Leave to appeal refused.

ORDER

- (1) The first and the second respondents' application for leave to appeal is dismissed with costs.
- (2) The first and the second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this opposed application for leave to appeal, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C' as against the first respondent and on scale 'B' as against the second respondent.

JUDGMENT [APPLICATIONS FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original opposed application by the applicant (FirstRand Bank) for a monetary judgment on the basis of suretyships signed by the first and the second respondents (respondents) in favour of the applicant. On 21 November 2025 written judgment was handed down in the said application. The applicant's application succeeded and I granted judgment in favour of the applicant against the respondents, jointly and severally, respectively for payment of the sums of R11 575 059.17 and R2 500 000, together with interest thereon and costs of suit. The respondents are the first and the second applicants in this application for leave to appeal and the applicant is the respondent herein.

[2]. The respondents apply for leave to appeal against the whole of the aforementioned judgment and order, including the order for costs. The respondents contend that I erred in granting the aforesaid order and that I should instead have dismissed the applicant's application with costs. In a nutshell, the

respondents' case in this application for leave to appeal is that I erred in a number of factual and legal findings. So, for example, it is contended on behalf of the respondents that the court *a quo* misdirected itself and erred in summarily rejecting the respondents' defence of mistake. I should not have found, so the contention goes, that the respondents' claim that they did not understand that they were binding themselves as suretyships, can and should be rejected simply by being stated. The respondents furthermore submit that I should not have found that the respondents ought to have known that they were signing suretyships.

[3]. It is furthermore contended by the respondents that I misapplied the rule in *Plascon-Evans* and that I should at the very least have found that there is a *bona fide* dispute of fact in the matter that cannot be resolved on the papers. Those disputes of fact should have been referred to oral evidence under the rubric of Uniform Rule of Court 6(5)(g). I also misapplied, so the contention goes, the *caveat subscriptor* rule.

[4]. The respondents also argue that there are other compelling reasons why the proposed appeal should be heard. In that regard, the court *a quo* impermissibly determined the application in a manner that defeated and/or frustrated their rights under section 34 of the Constitution. Moreover, the disputes in issue, according to the respondents, relate to important questions of fact, law and/or principle and specifically, the questions of law and/or principle in issue have wide public interest and importance.

[5]. There are further grounds on which the application for leave to appeal is based. They are related to and overlap with the grounds alluded to *supra*. All the same, nothing new has been raised by the respondents in their application for leave to appeal. In my original judgment of 21 November 2025, I have dealt with most, if not all of the issues raised by the respondents in its application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate what I said in my original judgment that it would have been abundantly clear to any reasonable signatory exactly what the nature of the documents were. Moreover, the respondents did not present any evidence in their answering

affidavit about anything that prevented them from reading the suretyships – they did not even allege that they did not read them – or from discussing them with their legal representatives.

[6]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may 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 23rd of August 2013, and which provides 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’.

[7]. 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 ‘would’ 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.

[8]. 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

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

must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[9]. 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 a judgment in *Notshokovu v S*³. In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Courts 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.

[10]. I am not persuaded that the issues raised by the respondents in their 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 therefore conclude 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. Therefore, in my view, the appeal does not have reasonable prospects of success.

[11]. Moreover, there are no other compelling reasons why the appeal should be heard, as envisaged by s 17(1)(a)(ii) of the Superior Courts Act.

[12]. Leave to appeal should therefore be refused.

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

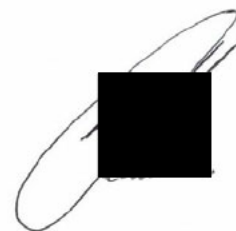
³ *Notshokovu v S* 2016 JDR 1647 (SCA); Case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

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).

Order

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

- (1) The first and the second respondents' application for leave to appeal is dismissed with costs.
- (2) The first and the second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this opposed application for leave to appeal, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C' as against the first respondent and on scale 'B' as against the second respondent.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	7 May 2026
JUDGMENT DATE:	7 May 2026
FOR THE APPLICANT:	M T A Costa
INSTRUCTED BY:	Cox Yeats Attorneys, Umhlanga
FOR THE FIRST AND THE SECOND RESPONDENTS:	F A Darby
INSTRUCTED BY:	Snaid & Morris Attorneys Inc, Morningside, Sandton