IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2024-020685

DATE: 8 MAY 2026

In the matter between:

FIRSTRAND BANK LIMITED t/a FIRST NATIONAL BANK Applicant

and

AMORICOM (PTY) LIMITED First Respondent

TERRENCE MATHEBULA Second Respondent

Neutral Citation: *FirstRand Bank v Amoricom and Another (2024-020685)* **[2026] ZAGPJHC ---** (8 May 2026)

Coram: Adams J

Heard: 8 May 2026

Delivered: 8 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 12:30 on 8 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 – Leave to appeal granted.

ORDER

(1) The first and the second respondents are granted leave to appeal to the Full Court of this Division.

(2) The cost of this application for leave to appeal shall be costs in the appeal.

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 a loan agreement concluded between the applicant and the first respondent and a suretyship signed by the second respondents in favour of the applicant. On 19 September 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, for payment of the sum of R1 481 090.83, 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 submitted by the respondents that I erred in finding that the applicant proceeded with the disposal of the first respondent's property, as it was entitled to do in terms of the Repayment Arrangement ('RPA') read with the Special Power of Attorney ('SPOA'), for

R3 850 000, in the absence of any evidence that the said price was market-related or fair. The respondents also contend that I erred in my factual finding that the other offers procured by the respondents and forwarded to the applicant for consideration were validly rejected by the applicant.

[3]. It is furthermore submitted on behalf of the respondents that the court *a quo* erred in finding for the applicant notwithstanding the *Plascon Evans* rule militating against the applicant. Importantly, it is argued by the respondents that I erred in finding that the applicants acted reasonably and rationally when it proceeded to accept the offer of R3 850 000 and that its representatives acted with good faith and honesty throughout. I should have found, so the contention on behalf of the respondents continues, that the applicant, as agent under the SPOA, owed a duty of the utmost good faith to the first respondent, not to place its own interests above those of its principal. In terms of that duty, the applicant, who was at all material times aware of the municipal arrears, by and large constituting the shortfall for which judgment was granted in favour of the applicant, had a duty to the first respondent not to sell the property for less than the first respondent's outstanding indebtedness, together with arrear rates and taxes, unless it could be shown by the applicant that the reasonable market price of the property would not realize a sufficient amount to cover the outstanding debt to the applicant and the municipality, which the applicant failed to do.

[4]. 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 19 September 2025, I have dealt with most, if not all of the issues raised by the respondents in their 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, in view of the history of the matter leading up to the conclusion of the Repayment Agreement, which included a number of still born offers to purchase presented by the respondents, it is understandable that the applicant treated with circumspection the offers received *ex post facto* the final offer accepted by the applicant.

[5]. 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 was 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'.

[6]. 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.

[7]. 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.'

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

[8]. 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].

[9]. I am 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 indeed 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 have reasonable prospects of success.

[10]. Leave to appeal should therefore be granted.

Order

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

(1) The first and the second respondents are granted leave to appeal to the Full Court of this Division.

(2) The cost of this application for leave to appeal shall be costs in the appeal.

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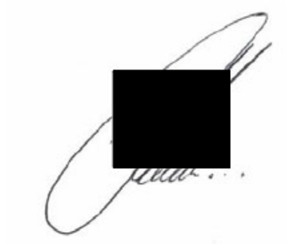
[2] *Mont Chevaux Trust v Tina Goosen,* LCC 14R/2014 (unreported).

[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).



[redacted]

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

HEARD ON:	8 May 2026
JUDGMENT DATE:	8 May 2026
FOR THE APPLICANT:	M De Oliveira
INSTRUCTED BY:	Jason Michael Smith Incorporated, Rosebank, Johannesburg
FOR THE FIRST AND THE SECOND RESPONDENTS:	C R Du Plessis
INSTRUCTED BY:	Louanne Visser Attorneys Inc, Ruimsig, Roodepoort