IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

REPUBLIC OF SOUTH AFRICA

CASE NO: 2026-052863

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12/5/2026. DATE	[redacted] SIGNATURE

In the matter between:

BOPHELA NC MANUFACTURING AND TRADING (PTY) LTD 1st Applicant

NONTUTHUKO CHAROL NGIDI 2nd Applicant

(formerly Respondents in the main application)

and

CATERPILLAR FINANCIAL SERVICES SOUTH AFRICA (PTY) LTD

(formerly Applicant in the main application) Respondent

Neutral Citation: <u>**Delivered:**</u> By transmission to the parties via email and uploading onto Case Lines

the Judgment is deemed to be delivered.

JUDGMENT (LEAVE TO APPEAL)

SENYATSI J:

[1] This is an application for leave to appeal against the judgment and order I handed down on 27 March 2026 ("the main judgment"). In that judgment, I found in favour of the respondent (Caterpillar Financial Services South Africa (Pty) Ltd, to whom I shall refer as "Catfin") and granted an order for the repossession of a Caterpillar Backhoe Loader, as well as ancillary relief. I also dismissed the points in limine raised by the applicants, who were the respondents in the main application.

[2] The applicants (Bophela NC Manufacturing and Trading (Pty) Ltd and Ms Nontuthuko Charol Ngidi) have filed a notice of application for leave to appeal. That notice was filed on 13 April 2026. It sets out seven grounds upon which the applicants seek to challenge the main judgment.

[3] However, the prosecution of this application has been markedly deficient. The applicants did not file any heads of argument as required by the Uniform Rules of Court and the practice directives of this Division. Furthermore, the applicants' erstwhile attorneys of record withdrew from the matter, and that withdrawal has

been duly noted on the court file. Most significantly, on the day set down for the hearing of this application, there was no appearance on behalf of the applicants.

[4] By contrast, the respondent (Catfin) has been properly represented throughout by Advocate Van Der Merwe, who filed comprehensive heads of argument dated 4 May 2026 in opposition to the application for leave to appeal. The respondent's heads of argument meticulously address each of the grounds raised by the applicants.

[5] The test for leave to appeal is governed by section 17(1)(a) of the Superior Courts Act 10 of 2013. Leave to appeal may only be granted 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 the appeal should be heard. An applicant for leave to appeal bears the onus to demonstrate that this threshold is met.

[6] In the present matter, the applicants have done little to discharge that onus. The mere filing of a notice of application for leave to appeal, without more, is insufficient. The failure to file heads of argument and the failure to appear at the hearing are not merely procedural irregularities; they evince an abandonment of the application. A party that does not advance any written or oral submissions in support of its application cannot reasonably expect the court to grant the relief it seeks.

[7] Even if I were inclined to overlook these defaults and consider the grounds of appeal on their merits, which I am not obliged to do ,I am satisfied that none of the grounds raised by the applicants has any reasonable prospect of success. I have carefully re-evaluated my findings in the main judgment. The applicants' grounds, as set out in their notice, essentially seek to re-argue the urgency ruling, the factual

findings regarding the insurance lapse and the tracking system, the existence of a dispute on the quantum of arrears, and the location of the equipment. I have considered each of these grounds and the submissions made by the respondent in opposition.

On urgency

[8] It is well settled that a ruling on urgency is a case management decision that is not appealable. In any event, my finding that the matter was urgent was properly grounded in the risk of disposal or concealment of a high-value movable asset not registered on e-Natis, the lapse in insurance, and the commercial realities of the case. There is no reasonable prospect that another court would interfere with that finding.

On the insurance breach

[9] It was common cause that the insurance cover had lapsed due to unpaid premiums, that this constituted an event of default under the Master Instalment Sale Agreement, and that Catfin was accordingly entitled to cancel the agreement. The duration of the lapse (whether four days or two months) does not detract from the fact of the breach. The cancellation was lawful, and the repossession order followed as a contractual remedy.

On the quantum of arrears

[10] My finding that there was no genuine dispute of fact on the arrears was correct. The applicants' answering affidavit contained bare denials and attempts to put Catfin to proof, which do not create a bona fide factual dispute. Moreover, the

applicants themselves conceded that arrears existed and had been partially settled. Even on their own version, there were arrears at the date of cancellation, which entitled Catfin to cancel.

On the location of the equipment and the tracking system

[11]The applicants did not place any evidence before me in the main application that the site in Harding was "secured". The ground now raised in the leave to appeal is an impermissible attempt to supplement the record. The speculative nature of the risk of tampering with the tracking system was properly considered, and my finding in that regard was not unreasonable.

[12] In short, I am not persuaded that any of the grounds advanced by the applicants have a reasonable prospect of success on appeal. Nor has any compelling reason been advanced why the appeal should be heard. The application for leave to appeal is devoid of merit, and its prosecution has been substantially abandoned.

Costs

[13] The respondent has been put to the trouble of opposing this application and has incurred costs, including the costs of counsel. There is no reason why the applicants should not be ordered to pay those costs. The respondent has asked for costs on the attorney and client scale, relying on clause 18.4 of the Master Instalment Sale Agreement which provides for such costs in enforcement proceedings. I am satisfied that this is an appropriate case for such an order, given the lack of merit in the application and the conduct of the applicants in failing to prosecute it properly.

ORDER

In the premises, I make the following order:

1. The application for leave to appeal is dismissed.
2. The applicants, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of this application on an attorney-and-own-client scale, such costs to include the costs of senior counsel for the respondent.

[redacted]

JUDGE SENYATSI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the Applicants:	None
Instructed by:	None
Counsel for the Respondent:	C V D MERWE
Instructed by:	SIBUYI ATTORNEYS

INC

sibuyiattorneys@gmail.com

Matter heard on:	7 May 2026
Judgement delivered on:	12 May 2026