THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

Date: 15 June 2026 [redacted]

Case no: 2023-012939

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED	Applicant/Plaintiff
And	
EDGAR ADAMS	First Respondent/First Defendant
SHENAZ RENAY ADAMS	Second Respondent/Second Defendant

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] This is a leave to appeal against the whole judgment and order I granted on 12 May 2026.[1] In that judgment, I granted summary judgment for payment of a sum of money and ordered that the respondents' (as they were) property be specially executable, setting a reserve price. The parties will be referred to as they were in the summary judgment (i.e. applicant and respondent). As in the court below, the first defendant appeared in person.

Leave to appeal test

[2] The test for leave to appeal is set out in Section 17(1)(a) of the Superior Courts Act 10 of 2013, which provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that —

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

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

[3] The use of the word "would" in section 17(1)(a)(i), in contradistinction to the former test of whether another court "might" come to a different conclusion, raises the threshold.[2] As for compelling reasons, they must be cogent, strong, and convincing. *Minister of Justice and Constitutional Development v Southern Africa Litigation Centre*[3] warned that no purpose is served by sending an important point of law to an appeal court if the prospect of interference with the judgment at first instance is remote.

[4] For the benefit of the respondents who appear in person, it may be helpful to explain at the outset the distinction between an application for leave to appeal and the appeal itself. In an application for leave to appeal, my task is to consider the grounds for leave advanced against the facts and the applicable legal principles, and to determine whether an appellate court would interfere with my decision. The facts to consider are those before me when I heard the case.

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[1] *Standard Bank of South Africa Limited v Adams* [2026] ZAGPJHC 504.

[2] *MEC for Health, Eastern Cape v Mkhitha* [2016] ZASCA 176 at para 17.

[3] 2016 (3) SA 317 (SCA) para 24.

[5] The application for leave to appeal is neither a hearing of the appeal itself nor an opportunity to introduce evidence not before the court when it decided the matter. The power to receive further evidence, as per section 19(b) of the Superior Courts Act,[4] vests in the court seized with the appeal "at the hearing of any appeal", not in the court considering whether to grant leave.[5] Appeals are generally decided on the facts and law as they stood when the judgment was given. Accordingly, the personal and financial information placed before me in what the respondents called a founding affidavit to the notice of leave to appeal, and which was not before the court at the summary judgment hearing, cannot be considered in this application.

[6] The respondents argued that the six grounds arise from the applicant's own pleadings and procedures and, in that sense, are not new defences pleaded. That, however, is not convincing. The respondents had that information available when they filed their plea and their affidavit opposing summary judgment. All these grounds could have been raised in their plea or affidavit, but the respondents elected not to do so. The application for leave to appeal in summary judgment proceedings is not another opportunity to reconstruct a defence on entirely different foundations. Leave to appeal is not an opportunity to abandon one's plea and to request that a completely different case be considered. Especially after the amendment of Rule 32, as thoroughly discussed in *Tumileng Trading CC v National Security and Fire (Pty) Ltd*,[6] that now requires the defendant to file a plea before the applicant may apply for summary judgment. This gives the defendant a meaningful opportunity (and later again in the opposing affidavit) to place its defence before the court. The respondents chose not to make use of those opportunities, with the consequence that they cannot seek to remedy that failure on appeal by making a completely new case.

Should leave be granted?

[7] Both the starting point and the ending point of this leave to appeal is the respondents on "petition" (notice of leave to appeal). They state (and I quote verbatim):

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[4] 10 of 2013.

[5] *Dreyer N.O. v Witbooi* [2026] ZALCC 23, see paras 17–22.

[6] 2020 (6) SA 624 (WCC).

> "The Appellants acknowledge and accept without reservation that the judgment correctly rejected all arguments advanced in their plea and opposing affidavit concerning sovereignty, the strawman theory, the ALL CAPS names argument, Aboriginal jurisdiction, and all related contentions. Those arguments were wrongly advanced and had no foundation in South African law. The Appellants do not seek to revive any of them. They form no part of this petition."

[8] Notwithstanding that concession, the respondents advanced six new grounds that were not raised in either their plea or their affidavit resisting summary judgment.

[9] The acknowledgement quoted above is dispositive of the application for leave to appeal. The respondents concede that their defences before the court were correctly rejected and lacked any foundation in South African law. They also do not contend that this court erred regarding what was argued before. In that sense, the judgment is not contested. No other court would have any basis to interfere with the findings that both parties accepted as correct. There is thus no reasonable prospect of success on appeal in the sense required under section 17(1)(a)(i).

[10] This leaves the only question whether there are compelling reasons to grant leave to appeal. The respondents state that execution at the reserve price would leave them homeless and still indebted, and that a fundamentally wrong legal strategy consumed all their attention, leaving the legal questions unexplored. The interest of justice, they submit, requires an appellate court to consider those questions before the execution order is carried out.

[11] The respondents did not place their personal and financial circumstances before the court at the summary judgment stage, and, in the applicant's case, the execution was not manifestly disproportionate given the arrears. The material the respondents now seek to introduce to support this point was not before the court at that time (i.e., the respondents' combined income, their dependants, and the ownership of a second property).

[12] As set out above, that material cannot be introduced for the first time on leave to appeal, and it is accordingly not evidence before me in this application. I am,

however, conscious of what is at stake. The loss of one's home is a severe consequence, and section 26(3) of the Constitution, read with Rule 46A, imposes a genuine obligation on a court not to authorise execution against a primary residence without satisfying itself that such an order is just and equitable in all the circumstances. That obligation reflects a constitutional commitment to housing as a fundamental right, as affirmed in *Jaftha v Schoeman*[7] and *Gundwana v Steko Development*.[8]

[13] That constitutional obligation depends on the facts before the court. At the summary judgment hearing, the respondents placed no personal circumstances before me. By contrast, the plaintiff set out the extent of the arrears and suggested a reserve price. There was no suggestion of unemployment, destitution, or that the sale of this house would leave the respondents homeless. The facts before the court did not indicate manifest disproportionality in the execution, nor did they suggest an abuse of the process. The order was accordingly just and equitable on the record before me, with no reasonable prospect of success on appeal.

[14] As for the point that there might have been a different outcome had different defences been raised, that cannot constitute a compelling reason on the merits. Finality in litigation is also in the interest of justice, especially where the respondents conceded that the judgment is correct.

Conclusion

[15] The respondents have not shown that another court would come to a different conclusion, nor that there are compelling reasons. Costs should follow the result.

Order

[16] The following order is made:

1. The application for leave to appeal is dismissed.
2. The respondents are to pay the costs of this application.

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[7] 2005 (2) SA 140 (CC).

[8] 2011 (3) SA 608 (CC).

[redacted]

WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	12 June 2026
Date of judgment:	15 June 2026
For the applicant:	PR Long instructed by Van Hulsteyns Attorneys
For the respondents:	In person