



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: 2024-109949

DATE: 3 SEPTEMBER 2026

In the matter between:

ENERNET AFRICA (PTY) LIMITED

Applicant

and

IRONVELD SMELTING (PTY) LTD

Respondent

Neutral Citation: *Enernet Africa v Ironveld Smelting* (2024-109949) [2026]

ZAGPJHC --- (3 September 2026)

Coram: Adams J

Heard: 3 September 2026

Delivered: 3 September 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 3 September 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 – *Held* that the issues raised by the respondent in its application for leave to appeal, are issues in respect of which another court is unlikely to reach conclusions different to those reached by the court *a quo* – there are no reasonable prospects of another court making factual findings and coming to legal conclusions at

variance with factual findings made and legal conclusions reached by the court *a quo* – the appeal, therefore, has no reasonable prospects of success –

There also do not exist other compelling reasons for leave to appeal to be granted (s 17(1)(a)(ii)) – the decision sought to be appealed against does not involve an important question of law –

Leave to appeal refused with costs.

ORDER

- (1) The respondent's application for leave to appeal is dismissed with costs.
 - (2) The respondent shall pay the applicant's costs of the application for leave to appeal on the attorney and client scale, including Counsel's charges on scale 'C' of the tariff as contemplated in Uniform Rule of Court 67A(3), read with rule 69.
-

JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original opposed application by the applicant, in which the applicant sought to enforce against the respondent a documents disclosure clause in a cession agreement. The respondent is the applicant in this application for leave to appeal and the applicant is the respondent herein.

[2]. On 26 February 2026 I handed down a written judgment and an order granting in effect the applicant all of the relief sought by it. I, in particular, compelled the respondent to produce bank statements, its debtors' book and other financial statements and books of account to enable the applicant to perfect the continuing general covering security it had over the debts owed to the respondent by its debtors. The production of these documents was ordered in accordance with the terms and conditions of the cession and in effect amounted to no more than an order for specific performance of the cession. Ancillary relief, as well as a costs order, were also granted in favour of the applicant against the defendant.

[3]. The respondent applies for leave to appeal against the whole of the aforementioned judgment and order, including the order for costs. The application for leave to appeal is based on the provisions of sub-section (i), as well as sub-section (ii), of section 17(1)(a) of the Superior Courts Act 10 of 2013, which reads as follows: -

‘17 Leave to appeal

- (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
 - (a) (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;’

[4]. The respondent contends that I erred in granting the aforesaid order and that I should instead have dismissed the applicant’s application with costs. The respondent contends, in particular, that I erred in failing to deal with and address a point of law relating the doctrine of election, which it raised in opposition to the main application. The mere fact that this point of law was not considered by the Court *a quo*, so the respondent’s contention goes, is a compelling reason for the appeal to be heard.

[5]. In sum, the legal point, according to the respondent, is this. From a legal point of view, so the respondent submits, as at the time of the launching of the main application, there was no longer a settlement agreement because, by instituting the other action proceedings wherein the applicant is suing for the full outstanding amount, it had ‘elected’ to cancel the agreement and sue thereupon. This is what the applicant has in fact done, according to the respondent. This means that the applicant, in pursuing the main application, sought to obtain specific performance of a contract which it had cancelled.

[6]. The respondent therefore contends that the court *a quo* ought to have found that, having elected to cancel the settlement agreement and to institute action proceedings for the full outstanding debt, this application constituted what in legalese is referred to as ‘approbating and reprobating’, which is impermissible.

I ought to have held the applicant to its election and should have dismissed the application with costs.

[7]. This argument by the respondent is misconceived at both a factual as well as at a legal level. The simple fact of the matter is that this defence based supposedly on the doctrine of 'election', although it was argued on behalf of the respondent during the hearing of the application in the court *a quo*, was never pleaded by the respondent in its answering affidavit. It was therefore not a dispute before the court *a quo*, which it was required to adjudicate. In any event, the contention is baseless in that the applicant did not cancel the settlement agreement, as alleged by the respondent. It in fact sued in the action proceedings for payment of the sum due in terms of that agreement. The respondent's argument that cancellation of the settlement agreement can be inferred from the institution of the legal action for payment of the whole outstanding amount is equally and singularly unsustainable.

[8]. Moreover, so the respondent contends, the approach adopted by the court *a quo* in relation to the defence of *lis pendens* was a formalistic one. A more relaxed application of *lis pendens*, taking into consideration the primary rationale sought to be achieved by the principle itself, which is the avoidance of a multiplicity of proceedings on the same subject matter. Therefore, so the contention on behalf of the respondent is concluded, the court *a quo* at the very least ought to have stayed the main application on the basis of the principle of *lis alibi pendens*.

[9]. Lastly, it is argued on behalf of the respondent that leave to appeal should also be granted on the basis of s 17(1)(a)(ii) of the Superior Courts Act as there are other 'compelling reasons' why the appeal should be heard. The mere fact that the court *a quo* did not consider and deal with the respondent's defence on the doctrine of election, so the respondent contends, is a compelling reason why an appeal should be heard.

[10]. Nothing new has been raised by the respondent in its application for leave to appeal. In my original judgment of 26 February 2026, I have dealt with most, if not all of the issues raised by the respondent in its application for leave to appeal and it is not necessary for me to repeat those in full.

[11]. 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’.

[12]. 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.

[13]. 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

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

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.'

[14]. 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 an unreported 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.

[15]. I am not persuaded that the issues raised by the respondent in its 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. The appeal, therefore, in my view, does not have a reasonable prospect of success.

[16]. I also do not believe that there are other compelling reasons why leave to appeal should be granted.

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

³ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

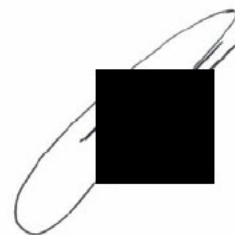
⁴ *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

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

Order

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

- (1) The respondent's application for leave to appeal is dismissed with costs.
- (2) The respondent shall pay the applicant's costs of the application for leave to appeal on the attorney and client scale, including Counsel's charges on scale 'C' as contemplated in Uniform Rule of Court 67A(3), read with rule 69.

A handwritten signature in black ink, appearing to read 'L R ADAMS', is written over a solid black rectangular redaction box.

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

HEARD ON:	3 September 2026
JUDGMENT DATE:	3 September 2026
FOR THE APPLICANT:	(Ms) S G Dos Santos
INSTRUCTED BY:	Cliffe Dekker Hofmeyr Incorporated, Cape Town
FOR THE RESPONDENT:	K I Kabinde
INSTRUCTED BY:	Motlatsi Seleke Attorneys, Sandton