



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: ☒
	
SIGNATURE	<u>24 August 2026</u> DATE

CASE NO: 2022-021553

In the matter between:

TREVOR THABANG MOKOENA

APPLICANT

and

THE STANDARD BANK OF SOUTH AFRICA

RESPONDENT

JUDGMENT ON LEAVE TO APPEAL

THOBANE AJ,

Introduction

[1] The applicant seeks leave to appeal a judgment of this Court handed down on 20 November 2024. The appeal is directed at both the order dismissing the application for rescission of judgment as well as an order of the award of costs against the applicant, which were awarded on a scale as between attorney and client.

[2] In the notice of application for leave to appeal, the applicant gives notice that;

2.1. should leave to appeal be granted, an appeal would have a reasonable prospect of success; and

2.2. there is a compelling reason why the appeal should be heard and there is also a reasonable possibility that a Full Bench of another Court may come to a different conclusion.

[3] In the notice of application for leave to appeal, the applicant asserts that the appeal would have reasonable prospects of success were leave to be granted and also that there is a compelling reason why the appeal should be heard in that there is a reasonable possibility that a Full Bench of another Court may come to a different conclusion regarding the dismissal of the application for rescission of judgment, thus foreshadowing the provisions of section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013¹.

¹ **Leave to appeal**

17. (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 including conflicting judgments on the matter under consideration;

[4] The applicant further lists points on which he believes the Court correctly found or ruled, followed by those that he believes the Court erred. It is not necessary to list those that the Court is said to have made correct findings in this judgment, as they do not advance the case one way or the other.

[5] The applicant contends that the Court erred or misdirected itself when it made subsequent findings in its judgment, despite finding elsewhere in the judgment that;

“It must be permissible to serve process by affixing to the principal door or main door, if personal service or service on a person old enough to receive process (over the age of 16 years) cannot be achieved.”

[6] The nub of the applicant’s case, as framed by him, is that he is disputing that the sheriff served the summons at his chosen *domicilium* address by way of affixing and by implication, the accuracy of the return of service. He asserts that a tenant of his, with whom he was often in contact, was present at the *domicilium* address around the time of service, by affixing, of the summons to the main or principal door.

[7] The applicant identified four points which inform the basis of his contention that the Court erred. In challenging the accuracy of the sheriff’s return of service, the applicant made an assertion, which assertion was at the core of the application for rescission of judgment, that a tenant of his, with whom he was in constant contact, was present at the *domicilium* address around the time of service of the summons. The four points, which were lifted from the judgment dismissing the application for rescission of judgment are that;

7.1. the sheriff is a creature of instructions. He serves process as instructed or directed by the process itself and returns his findings to Court. It is not

mentioned by the applicant why it is contended that the statement made by the Court is objectionable or became one of the points informing the application for leave to appeal. That the sheriff is a creature of instructions and acts as directed by the process itself and to thereafter, as required, report to the Court is trite. There is no issue in this regard;

7.2. Neither the sheriff nor the respondent had an obligation to reach out to the applicant and do more than what was required namely, to serve summons on him. I add, as directed by the process itself. The statement by the Court, is factual and is legally correct. The sheriff acts on the process itself and is under no obligation to go beyond the process and act extraneous the process itself unless so instructed. I can see no reason that invalidates what is contained in the statement and is thereafter regurgitated as espousing current law;

7.3. The applicant has not put up an affidavit from the tenant nor has he contacted the sheriff to dispute what the return of service suggests. As will be shown later in this judgment, the return of service, being *prima facie* evidence of what the sheriff has done, cannot be displaced nor can it be impeached by conjecture, speculation, presumption, belief, assumption, inference, postulation or even suspicion. It cannot even be displaced or impeached by hearsay evidence.

7.4. The hearsay statement that the applicant's tenant was present, is not evidence of the fact that the tenant was indeed present nor is it evidence showing that the process was not served in a manner set out by the sheriff in the return of service. It is current law that hearsay evidence cannot override, displace, impeach or overturn *prima facie* evidence of the sheriff. That being the case, whether the applicant was informed by the tenant that he, (the tenant), was at the *domicilium* address, or whether owing to constant contact with the tenant, the applicant speculates, presumes, believes, assumes,

infers, postulates or even suspects that the tenant was at the *domicilium* address around at the time of service of the process, falls to be rejected as not being weighty enough, by any Court hearing the appeal, to overturn, displace or impeach the sheriff's *prima facie*, time, place and manner of service of the process (the summons).

[8] The applicant accentuates two of the points and builds his case for leave to appeal around them. Firstly, the finding by the Court that there was no obligation on the sheriff to reach out to the person to be served and do much more than what he was instructed to do in the process itself, which was to serve the process as instructed and permitted by law. That the sheriff is a creature of instructions, a comment which the Court made in its judgment and which is made in many Court decisions, is said to be an issue, finding or opinion on which the Court erred. It is not an issue at all and cannot get elevated to it being an error. Besides, no reason has been advanced why it is so contended by the applicant. Secondly, the finding that the Court made in the judgment, to the effect that the applicant was relying on hearsay, was said to have been erroneously made. In support of the application for leave to appeal, the applicant relies on certain cases which he believes are supporting his case. I do not agree with such a posture and will deal with the cases relied on, in detail below.

[9] The application for leave to appeal is opposed by the respondent who is of the view that on the facts of this case and regard being had to case law, the findings by the Court cannot be assailed.

[10] Sight must not be lost of the fact that the judgment and order against which leave to appeal is sought, dismissed the applicant's application for rescission of judgment. The singular reason for the rescission was the fact that the applicant

contended that the summons was not properly served in that whereas the sheriff's return of service indicated that the summons was served by affixing to the principal or main door of the applicant's chosen *domicilium* address, a tenant of the applicant who occupied the premises, informed him or the applicant himself knew, owing to being in constant contact with said tenant, that the tenant was present at the *domicilium* address, around the time when the summons was served by way of affixing to the principal or main door.

[11] In the judgment dismissing the application for rescission of judgment, the Court opined as follows, and it was dealt with above;

“[13] The applicant is taking issue with the service, by the sheriff, of the summons at his chosen *domicilium* address by way of affixing to the principal door. It must be mentioned that it is permissible to serve process by affixing to the principal or main door, if personal service or service on a person old enough to receive process, (over the age of 16 years) cannot be achieved. Without more, the applicant is disputing that the sheriff served the summons at his chosen *domicilium* address. He asserts that a tenant of his, with whom he is often in contact, was present at the *domicilium* address around the time of service by affixing. He challenges the sheriff to say much more than what is contained in his return of service. The sheriff is a creature of instructions. He serves process as instructed or directed by the process itself and returns his findings to Court. Besides, the applicant has not put up an affidavit from the tenant nor has he contacted the sheriff to dispute what the return of service suggests. He contends that more should have been done by the respondent, to bring the summons to his attention. Neither the sheriff nor the respondent has an obligation to reach out to the applicant and do much more than what is required, namely, to serve the summons on him. The hearsay statement that his tenant was present, is not evidence of the fact that the tenant was present nor is it evidence showing that the process was not served.”

[12] The aforementioned opinion by the Court has attracted unfair and unwarranted criticism from the applicant. To the extent that the applicant relies on the aforesaid opinion to anchor his application for leave to appeal, it is my view that such reliance is misplaced as will be demonstrated more fully below.

The law

[13] It is now settled that the threshold in an application for leave to appeal since the advent of the Superior Courts Act has been raised. That much was said in *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*², where Bertelsmann J held as follows:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion.....The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against”.

[14] The Full Court of this Division in *Fairtrade Tobacco Association v President of the Republic of South Africa*³ likewise held that-

“As such, in considering the application for leave to appeal, it is crucial for this Court to remain cognisant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on facts and law.”

² *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others* LCC14R/2014, 2014 JDR 2325 (LCC) at para 6. See also *Acting National Director of Public Prosecutions and Others v Democratic Alliance* [2016] ZAGPPHC 489 (24 June 2016).

³ *Fairtrade Tobacco Association v President of the Republic of South* (21688/2020) [2020] ZAGPPHC 311 (24 July 2020).

[15] The SCA in *Smith v S*⁴, per Plasket AJA, as he then was, had occasion to consider what constitutes reasonable prospects of success as envisaged in section 17(1)(a)(i) and held:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a 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.”

[16] It is with the aforesaid principles and case law in mind that this Court approaches the application for leave to appeal on the grounds that are considered in turn below.

Evaluation

[17] Firstly, I deal with the applicant’s reliance on *ABSA v Mare*⁵, (*Mare*) which was also dealt with in the judgment dismissing the application for rescission of judgment. The applicant contends that on the facts of *Mare*, where the Full Court was called upon to make a determination in relation to the same legal question, as the applicant frames it, whether the service was good and proper enough, the prospects of success of the appeal are not remote. This however cannot be the case. The facts are not at all similar and the manner of service is equally dissimilar.

⁴ *Smith v S* 2012 (1) SACR 567 (SCA) at para 7. See also *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 at para 17.

⁵ *ABSA v Mare* (A56/2019) [2020] ZAGPPHC 372; 2021 (2) SA 151 (GP) (20 August 2020)

[18] It is true that one of the legal questions in this matter is the same as one of the legal questions in *Mare* namely, what amounts to good and proper service. The facts of both cases are however distinct. I agree with the findings in *Mare*, and am of the view that it was correctly decided on the facts that were before the Full Court, as I demonstrate below.

[19] In the return of service in the *Mare* matter, the sheriff indicated that the summons was served by affixing ‘on the grass’. The service of summons in the manner indicated in the return of service of the summons, was preceded by service of the statutory notice, the section 129⁶. The reason why service of the section 129 notice was found not to be in accordance with the law, was that it was served by ‘affixing to the gate’ in circumstances where the defendant (Ms. Mare) resided on a small holding which did not have a perimeter fence and did not have a gate. The Court found, correctly, that such service fell short of what was required in law, namely, that service must be executed or carried out in such a way or manner that the process served will come to the attention of the intended recipient.

[20] As stated above, Ms. Mare resided at a small holding with a dwelling on it. I agree that by affixing the summons to the grass at the chosen *domicilium citandi et executandi*, the process would have been susceptible to the vagaries of the weather and would not ordinarily as a result have come to the attention of the intended recipient, thus the service was not in accordance with the provisions of Rule 4(1)(a)(iv).

⁶ National Credit Act 34 of 2005.

[21] The Full Court in *Mare*, from which I quote generously, restated the law pertaining to service of process by the sheriff and does not support the proposition which the applicant contends it does. The following was said from paragraph 25;

“... In *Amcoal Collieries Ltd v Truter* 1990 (1) SA 1 (A) at 5H-6D, Nicholas AJA said this:

‘It is a matter of frequent occurrence that a *domicilium citandi et executandi* is chosen in a contract by one or more of the parties to it. Translated, this expression means a home for the purpose of serving summons and levying execution. (If a man chooses *domicilium citandi* the *domicilium* he chooses is taken to be his place of abode: see *Pretoria Hypotheek Maatschappij v Groenewald* 1915 TPD 170.) It is a well-established practice (which is recognised by Rule 4(1)(a)(iv) of the Uniform Rules of Court) that, if a defendant has chosen a *domicilium citandi*, service of process at such place will be good, even though it be a vacant piece of ground, or the defendant is known to be resident abroad, or has abandoned the property, or cannot be found. (*Herbstein and Van Winsen The Civil Practice of the Superior Courts of South Africa* 3rd ed at 210. See *Muller v Mulbarton Gardens (Pty) Ltd* 1972 (1) SA 328 (W) at 331H - 333A, *Loryan (Pty) Ltd v Solarsh Tea & Coffee (Pty) Ltd* 1984 (3) SA 834 (W) at 847D - F.) It is generally accepted in our practice that the choice without more of a *domicilium citandi* is applicable only to the service of process in legal proceedings. (*Ficksburg Transport (Edms) Bpk v Rautenbach en 'n Ander* (supra 333C - D). Parties to a contract may, however, choose an address for the service of notices under the contract. The consequences of such a choice must in principle be the same as the choice of a *domicilium citandi et executandi* (cf the *Ficksburg Transport* case *ubi cit*), namely that service at the address chosen is good service, whether or not the addressee is present at the time.’

[26] The manner in which a process may be delivered or left at a *domicilium* in terms of r 4(1)(a)(iv) is not prescribed and depends on the prevailing circumstances. The relevant provisions of the loan agreement in question (clause 37) also do not prescribe the manner of delivery or of acceptance at Ms Mare’s chosen *domicilium* address. The

duty upon a sheriff is to serve a notice or process of court at a *domicilium citandi* by delivering or leaving the notice or process in a manner by which in the ordinary course the notice or process would come to the attention and be received by the intended recipient, and to report to the court how the process was served and why it was served in that manner. The delivery requirement at a *domicilium citandi*, as was said by Margo J in *Loryan (Pty) Ltd v Solarsh Tea and Coffee (Pty) Ltd* 1983 (4) SA 834 (W) at 849A-B,

‘. . . presupposes delivery in any manner by which in the ordinary course the notice would come to the attention of and be received by the lessor. The obvious method would be by handing the notice to a responsible employee, or by pushing it under the front door, or by placing it in the mailbox.’

[27] Leaving the summons on the grass where it can be blown away, taken away or be invisible, was not an appropriate place for delivery in the particular circumstances. Where delivery of a notice or process is to be effected at a residence chosen as a *domicilium citandi*, it would equally not have been enough merely to drop the process over a perimeter fence or to put it into a hedge. (Cf. *Loryan* at 847H-I.) Ms Mare’s chosen *domicilium citandi* is not a vacant piece of land, but a smallholding with a dwelling on it, which is her private residence. The obvious method of delivery by which in the ordinary course the summons would have come to her attention and received by her, and which the sheriff in *casu* was required to do in order to comply with the method of service prescribed in terms of r 4(1)(a)(iv), was to hand a copy of the summons to Ms Mare personally (I accept her evidence that she was present at the time of service of the summons), to a responsible employee, if there was someone present, by slipping it under or affixing it to the front door of her home, or even by placing it in a post box, if there was one.” (The underlining is my emphasis).

[22] It is clear from the Full Court’s reasoning in *Mare*, on which the applicant relies, that service by way of affixing the summons to the principal or main door as was the case *in casu*, is not only an acceptable way of service of Court

processes at a chosen *domicilium citandi et executandi*, but is also in accordance with the provisions of Rule 4(1)(a)(iv). What sets apart *Mare* to the facts of this case is that in *Mare* the summons was served by affixing to “grass” whereas in *casu* the summons was served by affixing to “the main or principal door”. The court opined in *Mare* that “*Leaving the summons on the grass where it can be blown away, taken away or be invisible, was not an appropriate place for delivery in the particular circumstances*”⁷. Service of summons by affixing to the front, main or principal door, among other methods of service, was described in *Mare* as; “*The obvious method of delivery by which in the ordinary course the summons would have come to her attention and received by her, and which the sheriff in casu was required to do in order to comply with the method of service prescribed in terms of r 4(1)(a)(iv)*”.

[23] I now frontally turn my attention to the applicant’s challenge to the sheriff’s return of service. The applicant makes a positive assertion that the sheriff did not serve the summons at his chosen *domicilium* which was occupied by a tenant of his at the time. The reason why the applicant contends that the sheriff did not serve the summons at the chosen *domicilium*, is because the tenant was at the address, around the time of service of the summons by affixing to the main door. To buttress his contention, the applicant stated that he was often in contact with said tenant. Nothing further, other than the submission that the applicant was in constant contact with the tenant as well as the submission that the tenant was present at the *domicilium* address around the time of service, is said about service of the summons. That the applicant was in constant contact with the tenant and that the tenant was at the *domicilium* address at the time, as was said in the judgment, without more is not helpful.

⁷ *ABSA v Mare* paragraph 27.

[24] The applicant criticizes the judgment on rescission particularly the Court's finding relating to the absence of an affidavit from the tenant. He further juxtaposes absence of the affidavit in this matter with the matter of *Nonjabulo Lerato Buthelezi v Liquid Vehicle, a product of Wesbank, a Division of Firststrand Bank Limited*⁸, (*Buthelezi*), where the Honourable Dippenaar J did not require an affidavit to prove that the applicant in that matter was present at the *domicilium* address when the summons was served. Having read *Buthelezi* I can discern and it is clear from the reading that the reason why Dippenaar J did not require an affidavit in *Buthelezi* is because of the facts that were placed before Court. The reason is manifest and is facts specific, just as was the case in *Mare* which I dealt with above and deal with again below.

[25] In *Mare*, the sheriff rendered a return which stated among other things that the summons was served by affixing to the "grass". Ms. Mare's property or smallholding was over 7 hectares in size. The court found, correctly in my view, that service of the summons was not in accordance with the law because it was served in such a manner that the summons would not have come to the attention of Ms. Mare. The return of service also stipulated that on two other separate occasions there had been unsuccessful attempts to serve the summons and that during those times, there was a promise (although not stipulated by whom, however the Court presumed it was by the applicant), to collect the document or summons. Ms. Mare denied making any promises to the sheriff and her denial as to the attempted service and the promise to collect documents, which was not refuted or challenged by the respondent, was in my view correctly accepted by the Court. The Court found that such service fell short of what was required in

⁸ *Nonjabulo Lerato Buthelezi v Liquid Vehicle, a product of Wesbank, a Division of Firststrand Bank Limited* (144/2022) 12 August 2023.

law, namely, that service must be in a such a manner that the process served will come to the attention of the intended recipient.

[26] In *Buthelezi* the sheriff's return of service indicated that the summons was served by way of affixing to the principal door. The applicant challenged the return of service on the basis that she was present on the date at the time of service of the summons by affixing to the main door. In addition, her aunt and her brother, both of whom were unemployed at the time, were present at the time the summons was allegedly served by affixing. Her, version was undisputed, the Court found and accepted it.

[27] In both *Mare* and *Buthelezi* the applicants deposed to affidavits indicating that they each were personally at their chosen *domicilium* address at the time of service of the summons. What was mentioned in their affidavits, that they were at the chosen *domicilium* address, coupled with information which was patently false in their respective returns of service, together with the fact that the respondents in those matters, did not challenge the assertion by the applicants that they were at the scene, persuaded the Courts to accept what was alleged by the applicants.

[28] In this matter the applicant did not present evidence that the tenant was at the chosen *domicilium* address when the process was served, other than the unsupported and uncorroborated say so. The Full Court in *Mare*, where the sheriff was cited as a party, dealt substantively with the fact that whereas the applicant made factual averments about her presence at the *domicilium* address in her founding affidavit, as well as her version that there was never an undertaking to collect the summons from the sheriff, on one hand, the respondent (the bank), on the other hand, relied on generalized and bald denials of those

factual averments by the bank's senior legal counsel, who was not at the scene and therefore lacked first-hand knowledge. The Court assessed and accepted as correct, the evidence or factual averments presented by Ms. Mare under oath and rejected the bald and generalized denials of the bank. The Court said the following:

“Ms Mare's factual allegations that the property has no perimeter fence nor any gate, that she was present at the property when the statutory notice and the summons were respectively allegedly left at the property, and that she did not have any telephonic discussion with the sheriff about collecting the summons at his office, were not refuted by the generalised and bald denials of those factual averments by the bank's senior legal counsel, Ms Sabashnee Naidoo, who deposed to its answering affidavit. She did not on behalf of the bank engage with Ms Mare's factual allegations in this regard (*Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) at 375F-376B) nor could she, on the face of it, have any first-hand knowledge of whether and how the sheriff served the statutory notice and summons and what communications have transpired between the sheriff and Ms Mare. Her generalised and bold denials cannot be said to have created a genuine factual dispute. The sheriff, who is a party to these proceedings, did not file an affidavit nor was one obtained from him to take issue with the veracity or accuracy of Ms Mare's factual averments in this regard. In the circumstances, Ms Mare's factual averments must be accepted as correct...”⁹

[29] It is trite that the sheriff's return is *prima facie* evidence of the facts therein stated. In the context of this matter, there is *prima facie* evidence that the summons was served by way of affixing to the main or principal door of the applicant's chosen *domicilium* address. Section 43 (1) and (2) of the Superior Courts Act provides as follows;

⁹ *ABSA v Mare* paragraph 20.

“Execution of process by sheriff

43. (1) The sheriff must, subject to the applicable rules, execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands and processes of any Superior Court directed to the sheriff and must make return of the manner of execution thereof to the court and to the party at whose instance they were issued.

(2) The return of the sheriff or a deputy sheriff of what has been done upon any process of a court, shall be *prima facie* evidence of the matters therein stated.”

[30] The applicant did not dispute that service of the summons at his chosen *domicilium* address, if it did take place as described in the return of service, which return of service contained *prima facie* evidence, would be regarded as competent and effective service, in accordance with Rule 4 (1)(a)(iv) and numerous other cases¹⁰. The applicant however wanted the Court *a quo* to accept his bald and generalised assertion, to the effect that he was in constant contact with his tenant and that around the time of service of the summons the tenant was at the *domicilium* address. Such evidence amounts to hearsay and is speculative. It is not the clearest and satisfactory evidence as articulated in *Deputy-Sheriff for Witwatersrand District v Harry Goldberg and Others*¹¹. It therefore cannot impeach, displace or overturn the *prima facie* evidence of the sheriff.

[31] The applicant argues that the onus is on the sheriff or the respondent to show that indeed there was service of the process at the chosen *domicilium* address by way of affixing. The following submission was made in the applicant’s heads of argument¹²;

¹⁰ *Nkata v FirtRand Bank Ltd* 2014 (2) SA (WCC); *ABSA v Mare (supra)* and *Nonjabulo Lerato Buthelezi v Liquid Vehicle, a product of Wesbank, a Division of FirstRand Bank Limited*.

¹¹ *Deputy-Sheriff for Witwatersrand District v Harry Goldberg and Others* 1905 TS 680.

¹² CaseLines 10-7 to 10-8 at paragraph 7.2.6.

“In other words, once the sheriff’s return (which is regarded as a *prima facie* evidence of its content) is disputed, the burden of proof shifts to the sheriff or the respondent and indeed, the moment the applicant received the rescission application challenging the contents of the sheriff’s return, the obligation was on the applicant to obtain the sheriff’s affidavit or explanation on why the service was executed in that manner i.e. by affixing.”

[32] That however is not the law. The onus is not on the respondent (the bank) in this matter, but on the applicant, who seeks to impeach the sheriff’s return of service. In *Absa Bank Limited v Collier*¹³ Savage J put it thus;

“[37] *Prima facie* evidence calls for an answer and places an evidential burden on the respondent. It follows that where a respondent seeks to impeach a return of the sheriff this must be done on ‘the clearest and most satisfactory evidence’. It is not open to a respondent to impeach a return on flimsy grounds or when there exists no reasonable basis on which to do so. In *Sussman & Co (Pty) Ltd v Schwarzer* it was stated that:

‘...If the respondent then wishes to impeach those facts then the onus shifts to him to show by clear evidence that although the return shows that the requirements of sec. 8(b) have been complied with they were in fact not complied with and that the return is not a proper return. Where, however, the return itself does not show that the requirements of the sub-section have been complied with, then the onus is not shifted and it rests on applicant to show that in fact the requirements have been complied with and that the return is in fact a *nulla bona* return.’”

¹³ *Absa Bank Limited v Collier* (A314/2014) [2015] ZAWCHC 26; 2015 (4) SA 364 (WCC) (12 March 2015)

Conclusion

[32] It would be absurd for a Court to accept bald and generalised statements of a litigant seeking to impeach a sheriff's return of service, such as the statements of the applicant *in casu* and displace, or overturn the *prima facie* evidence of service contained in the return of service, on the mere say so. All that needs to happen, on the applicant's version, is that a litigant must come to Court and state the process was not served because someone was there, and the Court must then on such say so accept that such was the case. I do not agree and no other Court will find otherwise. For all the above reasons I am of the view that the appeal, based on the advanced reasons would have no reasonable prospects of success. There is in addition, no other compelling reason why the appeal should be heard. It follows that the application for leave to appeal must fail. The speculation and hearsay of the applicant therefore cannot impeach, displace or overturn the *prima facie* evidence of the sheriff.

Order

[33] In the result I make the following order;

1. The application for leave to appeal is dismissed with costs.



**SA THOBANE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For Applicant: Mr. Ndobe,
Instructed by: Ndobe Incorporated,
Nieuw Muckleneuk, Pretoria.

For Respondent: Adv. Nkosi,
Instructed by: Findlay & Niemeyer Incorporated,
Hatfield, Pretoria.

Date of judgment: 24 AUGUST 2026 - This judgment was handed down electronically by circulating to the parties' legal representatives by e-mail, by being uploaded to the CaseLines platform of the Gauteng Division and by release to SAFLII. The date and time of hand down is deemed to be 10:00 on 24 AUGUST 2026.