

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 6702/2013 &

15820/2022

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE SIGNATURE	

In the matter between:

JOHN MOSIMA

First Applicant

LETTA NTHABISENG MOSIMA

Second Applicant

and

ABSA BANK LIMITED

First Respondent

SURIA KUMARI SAMANTHA PALANI

Second Respondent

VZLR INCORPORATED ATTORNEYS

Third Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

- [1] This is an application for leave to appeal against the whole of my judgment delivered on 10 September 2025, in which I dismissed two Rule 30A applications brought by the applicants and awarded costs against them.
- [2] The applicants seek leave to appeal to the Full Court of this Division alternatively the Supreme Court of Appeal. They contend that another court would reasonably arrive at a different conclusion on both Rule 30A applications and further submit that compelling reasons exist for the appeal to be entertained.
- [3] The first Rule 30A application concerned the sufficiency of the respondents' response to a Rule 7(1) challenge to authority. The second Rule 30A application concerned whether the first respondent was entitled, following alleged breach of a settlement agreement, to proceed by way of an application for default judgment rather than by means of a separate substantive application.

LEGAL PRINCIPLES

- [4] The applicable test is contained in section 17(1) of the Superior Courts Act 10 of 2013. Leave may only be granted where the court is of the opinion that:
- a) the appeal would have a reasonable prospect of success; or
 - b) there exists some other compelling reason why the appeal should be heard.
- [5] The threshold imposed by section 17(1) is a stringent one. It is no longer sufficient that the case is arguable or not hopeless. There must be a sound basis for concluding that another court would reasonably arrive at a different result.
- [6] Where the order sought to be appealed is interlocutory in nature, section 17(1)(c) further requires consideration of whether the appeal would lead to a just and prompt resolution of the real issues between the parties. The interests of justice remain the guiding consideration.

THE APPLICANTS' GROUNDS

- [7] The applicants advance four broad contentions.
- [8] First, they contend that paragraph [30] of the judgment refers to findings in paragraphs "29, 30 and 31" although paragraphs 30 and 31 do not contain the

findings contemplated by the conclusion. They submit that this demonstrates a material misdirection.

[9] Secondly, they contend that the judgment relied on incorrect factual findings regarding the authority of the second respondent and the mandate of the third respondent.

[10] Thirdly, they contend that insufficient regard was had to the decision in *Masithela N.O and Others*¹ and the principles applicable to Rule 7 challenges.

[11] Fourthly, they contend that constitutional considerations relating to consumers and housing rights justify appellate scrutiny.

THE REFERENCE TO PARAGRAPHS 29, 30 AND 31

[12] There is merit in the submission that the references in paragraph [30] are inaccurate. Paragraph [30] states that the applications are dismissed in accordance with findings in paragraphs 29, 30 and 31. A contextual reading of the judgment demonstrates that this is an obvious drafting or typographical error.

[13] The critical enquiry is whether the error affects the substantive reasoning of the judgment. In my view it does not.

¹ *Masithela N.O and Others v Master of the High Court, Pretoria and Others* (60899/2021) [2024] ZAGPPHC 892.

- [14] The judgment contains extensive findings in paragraphs [20] to [29] dealing with the Rule 7 challenge and the second Rule 30A application. The conclusion dismissing the applications is clearly founded upon those findings. No uncertainty arises as to the basis upon which the applications were dismissed.
- [15] It is well established that not every error of expression or drafting warrants appellate intervention. The question is whether the result is affected. In the present matter there is no reasonable prospect that another court would conclude that the typographical error renders the judgment unsustainable.

THE RULE 7 CHALLENGE

- [16] The applicants persist in contending that the respondents failed to provide adequate proof of authority because they did not furnish additional internal documentation, including what is described as a letter from the company secretary and proof of prior internal approvals.
- [17] The judgment approached the matter through the prism of Rule 7, namely whether sufficient proof had been presented to satisfy the court that the second respondent was authorised to act on behalf of the bank and to appoint the third respondent as attorneys of record.
- [18] The respondents furnished a power of attorney, board resolution and supporting documentation. Those documents identified the second respondent, her position within the bank and her authority to appoint attorneys for debt recovery purposes.

[19] The applicants' challenge amounted largely to a detailed scrutiny of the contents of those documents in an attempt to demonstrate technical insufficiencies. As found in the judgment, such scrutiny did not negate the ordinary import of the documents, namely that the bank had authorised the second respondent and had accepted the acts performed on its behalf.

[20] Importantly, Rule 7 does not require proof beyond all conceivable doubt. It requires that the court be satisfied as to the authority of the person acting. The respondents discharged that burden.

[21] I am not persuaded that another court would reasonably conclude that the documents furnished were insufficient for purposes of Rule 7.

THE MASITHELA ARGUMENT

[22] The applicants submit that insufficient regard was paid to the decision in *Masithela*.²

[23] The principal proposition emerging from that decision is that a Rule 7 challenge may, in appropriate circumstances, be entertained outside the prescribed period upon good cause being shown.

² Ibid 1.

[24] However, my judgment did not dismiss the Rule 30A application on the basis that the Rule 7 notice was late. The observations regarding delay were peripheral and incidental to the reasoning.

[25] The decisive issue remained whether sufficient proof of authority had been produced. On that issue the factual matrix in *Masithela*³ is materially distinguishable from the present one.

[26] Consequently, I am not persuaded that another court would find that the judgment ignored binding authority or misapplied the law.

THE SECOND RULE 30A APPLICATION

[27] The applicants contend that the respondent was obliged to institute a separate substantive application based on breach of the settlement agreement and that the application for default judgment constituted an irregular step.

[28] The judgment found that the respondent's conduct was authorised by clause 11.1 of the settlement agreement and that the application for default judgment was therefore procedurally competent.

[29] Significantly, neither in the application for leave to appeal nor in argument has a convincing basis been advanced demonstrating why that interpretation of the settlement agreement is wrong.

³ Ibid 1.

[30] The applicants' submissions focus substantially on the factual history of the dispute and the institution and withdrawal of proceedings under the second case number. Those matters do not address the central finding that the settlement agreement entitled the respondent to proceed in the manner adopted.

[31] I accordingly remain unpersuaded that another court would arrive at a different conclusion on this issue.

APPEALABILITY AND INTERESTS OF JUSTICE

[32] The orders which formed the subject of the judgment were interlocutory in nature. They neither determined the merits of the parties' primary dispute nor disposed of the claims and counterclaims in the litigation.

[33] The applicants retain the opportunity to advance defences in the pending proceedings and to pursue such claims as may properly remain before the court.

[34] In these circumstances, granting leave to appeal would not contribute to the prompt resolution of the real issues between the parties. Rather, it would occasion further delay.

[35] The applicants' reliance on constitutional rights relating to housing and consumer protection is misplaced in the present procedural context. The judgment did not determine foreclosure relief, execution against immovable property, or any final infringement of constitutional rights.

[36] I am therefore not persuaded that there exists a compelling reason, separate from prospects of success, justifying the grant of leave to appeal.

CONCLUSION

[37] Having considered the grounds advanced, the submissions of both parties and the applicable legal principles, I am not of the view that another court would reasonably reach a different conclusion.

[38] Nor am I satisfied that any compelling reason exists requiring the appeal to be heard.

ORDER

[39] The following order is made:

1. The application for leave to appeal is dismissed.
 2. The applicants shall pay the costs of the application for leave to appeal on the scale provided for in the agreements concluded between the parties.
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**MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA**

APPEARANCES

For the Applicant: **Adv G Shakoane SC**

Instructed by: Molobi Inc. Attorneys

For the Respondent: **Adv CL Markram-Jooste**

Instructed by: VZLR Incorporated Attorneys

Date of Hearing: 31 August 2026

Date of Judgment: 09 September 2026

**THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES'
LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 09
SEPTEMBER 2026.**