

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO. 2019 / 23591

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES / NO

In the matter between:

XOLANI ALBERT QUBEKA
(Identity No: [...])
and

Applicant

FIRST RAND BANK LIMITED T/A WESBANK

Respondent

JUDGMENT

NASEERA ALI AJ

[1] This is an application for leave to appeal to the Full Bench of the Gauteng Local Division of the High Court, against the order granted against the applicant and hand down by this Court on 16 August 2021.

[2] The appellant/applicant shall herein be referred to as the applicant.

[3] The Court's power to grant leave to appeal to a higher court is found in section 17(1) of the Superior Courts Act, 2017 ("the Act") that reads as follows:

"17. 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 a matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[4] Leave to appeal should be granted only when there is a sound and rational basis for doing so.¹ The threshold for granting leave to appeal has also been raised.² The principles that emerge from the aforesaid cases requires that one test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether an appeal court "would" interfere in the decisions against which leave to appeal is sought.³

[5] The applicant has raised between 20 and 26 grounds of appeal. The grounds of appeal raised by the applicant deals exclusively with the court erring in many respects. The applicant's grounds of appeal are that the court erred in the following respects: in dismissing the application for rescission; in failing to establish the existence of 'good cause'; in failing to find that a bona fide defence exists; in finding that the summons was properly served on the applicant's domicile.

¹ Four Wheel Drive Accessory Distributors CC v Rattan 2019 (3) SA 451 (SCA)

² Independent Examinations Board v Umalusi and Others (83440/2019) [2021] ZAGPPHC 12 (7 January 2021)

³ JR v AL (21609/2021) ZAGPJHC) 3 December 2021

[6] The applicant continues to raise further grounds of appeal, but there is one ground which stands out, which is that the court erred in finding that the respondent was required to finance the applicant's balloon payment. I shall deal specifically with this ground of appeal. There is no reference to this in the judgment where a finding is made that the respondent is required to finance the applicant's balloon payment. The re-financing of the applicant's balloon payment by the respondent are the facts of the rescission application, which is the subject matter of the rescission application. The court was not tasked to make a finding on this issue as the respondent had already rejected the applicant's application to re-finance the balloon payment. This Court was tasked to determine whether the applicant had a bona fide defence and based on this requirement, whether the applicant has established 'good cause'.

[7] On the issue of re-financing the applicant, the applicant's defence is not clear. On the one hand, the applicant admits that the respondent is not obliged to provide re-financing, on the other, the applicant alleges that the respondent was obliged to provide a schedule for re-financing the balloon payment. The issue is one of re-financing by the respondent and not one where the respondent is tasked to provide a schedule for re-financing the balloon payment. There is no merit to applicant's defence. If the application to re-finance has been rejected, a schedule to re-finance cannot exist. This ground of appeal must fail as it makes no sense.

[8] Based on this ground alone and the other grounds of appeal, another court would not arrive at a different finding. The facts of the rescission are clear, the grounds of appeal are contentious.

[9] I have considered the extensive application for leave to appeal and I am of the view that most of the grounds have been answered in the judgment. The argument raised by the respondent has not persuaded me that another court would find differently or that another court would challenge the discretion I exercised based on recognised legal principles.

[10] I accordingly grant the following order:

The application for leave to appeal is dismissed with costs.

NASEERA ALI
Acting Judge of the High Court
Gauteng Division, JOHANNESBURG

This judgment was prepared and authored by Acting Judge Ali. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines.

Heard: 4 February 2022

Judgment: 17 February 2022

Applicant's Counsel: G Louw

Instructed by: K R ELLIOTT

Counsel for Respondent: L PETER

Instructed by: UTARA INARMAN