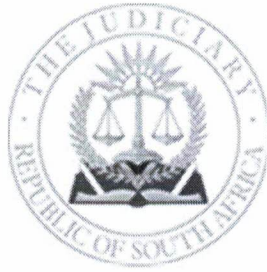
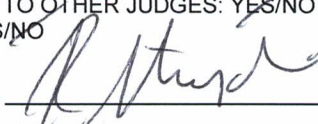


REPUBLIC OF SOUTH AFRICA



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

Case Number: 11116/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
6 June 2023	
DATE	SIGNATURE

In the matter between:

MPHO LITHA

Appellant

And

INVESTEC BANK LIMITED

Respondent

Neutral Citation: *Mpho Litha V Investec Bank Limited* (Case No. 2021/11116) [2023]
ZAGPJHC 653 (6 June 2023)

JUDGMENT

Strydom, J

[1] The Court will now deliver an *ex-tempore* judgment in this application for leave to appeal. This is an application for leave to appeal against my judgment handed

down on 16 May 2023. I do not intend to read the entire order of this Court into this judgment, suffice to say that a money judgment in the amount of R928 605.78 was ordered in favour of the respondent against the applicant. The Court also declared the property of the applicant executable. In terms of paragraph 3 of the order, the execution in terms of the warrant was stayed for a period of three months from the date of service of the order. Lastly, the Court granted costs against the applicant on an attorney and client scale, being the contractually agreed scale of costs applicable in litigation between the respondent and the applicant.

- [2] In terms of Section 17 of the Superior Courts Act, 10 of 2023, leave to appeal may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, including conflicting judgment on the matter under consideration. As far as the last criterion is concerned, no reliance was placed on this ground, and the only issue is whether the appeal would have a reasonable prospect of success.
- [3] In the notice of application for leave to appeal filed on behalf of the applicant, she attacked the extent of the outstanding debt. It was argued that the Court wrongly found that the debt was in the amount in which the order was made. There were some submissions made regarding the registration of a second bond, which was wrongly referred to in my judgment, as being registered on 10 January 2021. It should have read 10 January 2012. This mistake came about as in the heads on behalf of the respondent, this date was mentioned, although during the arguments it was corrected to say that it should have been 2012. In my view, nothing turns on this.
- [4] The respondent, in my view, placed sufficient evidence before this Court for this Court to have concluded that the total accelerated amount due in terms of the bond was in the amount of R928 605.78. The respondent was contractually entitled to rely on a certificate of indebtedness. Insufficient evidence was placed before Court to countenance the *prima facie* evidence regarding the outstanding balance as per the certificate of balance. On the applicant's own version, she was in arrears to the extent of R250 000 when the court order was made. This

amount of arrears was stated in the notice of application for leave to appeal in paragraph 6, which reads, and I quote:

“The appellant pleaded for the Court to give her time for four to six months to sort out her arrears, which were estimated at R250 000 as of 24 April 2023.”

- [5] A further point raised in the notice of application for leave to appeal is that the Court failed to exercise its discretion correctly as required in terms of Rule 46(A)(1)(a) and (b) of the Rules of this Court. It was argued that the Court must have given more weight to the fact that the applicant serviced the debt for a long time; that she has a good payment history but, more importantly, that she needs time to financially re-establish herself. It was argued that the Court did not give sufficient consideration to the fact that she had dependents living with her in their house which would have a detrimental effect on them should they be forced to vacate the property. I am of the view that the Court considered this aspect and that another court would not interfere with the exercise of discretion of this Court. The same applies as far as the determination of the reserve price in the amount of R1 200 000 is concerned.
- [6] In my view, the application for leave to appeal should not be granted. As far as the cost of this application is concerned, we are again at the contractually agreed scale of cost being the attorney and client scale. There is no reason why the Court should deviate from what the parties agreed to in this matter.

Order

- [7] The order of this Court is then as follows:
- a. The application for leave to appeal is dismissed.
 - b. The applicant is to pay the cost of this application on an attorney and client scale.



R STRYDOM

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

For the appellant:

Mrs. M. Litha

Instructed by:

In person

For the respondent:

Mr. M. De Oliveira

Instructed by:

ENS Africa

Date of hearing:

26 May 2023

Date of judgment:

26 May 2023