

SOUTH AFRICA / JUDGMENT

ABSA Bank Ltd v Tswago (Leave to Appeal) (114422/2023) [2025] ZAGPPHC 788 (29 July 2025)

[2025] ZAGPPHC 788

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis

CASE / FILE NUMBER

114422/2023

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HIGH

COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: 114422/2023

(1)

REPORTABLE: NO.

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE:

29 JULY 2025

SIGNATURE

In

the matter between:

ABSA

BANK LTD

Plaintiff

and

PATIENCE

BOITUMELO TSWAGO

Defendant

JUDGMENT

(in the application for leave to appeal)

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 29 July 2025.

DAVIS, J

Introduction

- [1] On 11 November 2024 this court granted summary judgment in favour of the plaintiff against the defendant for the return of the plaintiff's motor vehicle pursuant to a cancelled credit agreement.
- [2] The plaintiff is a commercial bank and the defendant is a natural person. The parties shall be referred to herein as in the main action.
- [3] The defendant had not delivered an affidavit resisting summary judgment and she was in default of appearance at the hearing of the summary judgment application.
- [4] On 19 February 2025 the defendant requested reasons for the summary judgment, which has subsequently been delivered.
- [5] The defendant now seeks leave to appeal the summary judgment. For purposes of her application for leave to appeal, she also sought condonation for the late delivery thereof. In order to avoid any prejudice to either party and in order to achieve finality in this matter, condonation is hereby granted.

Appealability

- [6] Upon receipt of the application for leave to appeal, delivered together with the request for reasons, the defendant's attorneys were informed of the judgment of Lee v RAF[1].
- [7] In that judgment Wilson J determined that no appeal lies against an order granted by a court where a party was in default of appearance at the hearing thereof.
- [8] Despite the above, the defendant elected to proceed with her application for leave to appeal. At the hearing thereof, counsel for the defendant did not contend that Lee v RAF had been incorrectly decided, but contended that the defendant's case falls within one of the exceptions to the general proposition

stated by Wilson J.

- [9] The exception contemplated by this argument is that referred to by Wilson J in par

[14] of his judgment. For the sake of context, the relevant part of this paragraph needs to be quoted: “A court of appeal ought generally only to intervene when the proceedings in the court a quo are complete. For so long as the

court a quo can, in principle, alter or reconsider its order, an aggrieved party’s remedy lies there. One exception to the rule is where it is in the interest of justice to entertain an appeal against an interim interdict that would cause irreparable harm to the party against whom it operates (see *National Treasury and Others v Outa and Others* 20 12 (6) SA 223 (CC)).”

[10] The reliance on the aforementioned exception is misplaced. In the present matter no interim interdict had been granted and neither was there any evidence of irreparable harm.

[11] Accordingly this court should follow the decision in *Lee v RAF*, the reasoning of which is both compelling and apposite.

[12] The application for leave to appeal is therefore fatally defective and should fail on this ground alone.

The application for leave to appeal itself

[13] In the written application for leave to appeal, it is alleged that this court had erred in not having applied sections 83, 84 and 85 of the National Credit Act[2] and by not having declared the defendant over-indebted. None of these sections featured in the defendant’s plea and their application or not did not feature as disputes in the summary judgment application.

[14] Accordingly, there is no reasonable prospect that a court of appeal would consider an issue which never featured in the hearing before the court a quo and in respect of which no evidence had been presented by the defendant.

The jurisdictional hurdle

[15] As a last-ditch attempt, the defendant argued that the plaintiff had not been entitled to apply for summary judgment due to the fact that a jurisdictional requirement for such applications, namely the delivery of a plea, was absent.

[16] In order to illustrate the fallacy of this contention, procedural context is necessary. It is the following:

- On 7 June 2023 the plaintiff instituted action against the defendant in Case no 066934/2023, claiming cancellation of the credit agreement between the parties and return of the plaintiff’s Renault motor vehicle.
- On 26 July 2023 the defendant delivered her notice to defend that action.
- On 29 August 2023 the defendant was placed under a bar to plead.

- The defendant failed to deliver a plea, but despite this failure, the plaintiff withdrew that action against the defendant on 6 September 2023.
- On 5 October 2023 the plaintiff instituted the current action against the defendant. The new certificate of balance annexed to the particulars of claim indicated that the arrears have increased by about 20% since the previous action.
- On 5 December 2023 the defendant delivered her notice of intention to defend the action.
- On 13 February 2024 the plaintiff served a notice of bar on the defendant.
- On 20 February 2024 the defendant delivered her plea. This was the plea that was considered in the summary judgment application and which featured in the reasons furnished.
- Subsequent to the delivery of the plea, the parties entered into settlement negotiations and agreed to suspend further legal proceedings.

The written confirmation hereof feature in par [17] of the furnished

reasons.

- On 3 April 2024 the parties reached an “in principle” settlement. This agreement and its breakdown on 15 August 2024 feature in paragraph [18] of the furnished reasons. This led to the continuance of proceedings and the service of the summary judgment application on the defendant’s erstwhile attorneys.
- [17] It appears that the plea delivered by the defendant’s erstwhile attorneys on 13 February 2024, incorrectly displayed the case number of the previously withdrawn action (Case No 066934/2023). This was clearly a typographical error. No plea could have been delivered at that time in respect of an already withdrawn action and the parties during their settlement negotiations clearly relied on this latter plea in the then pending action. It also featured in the affidavit delivered in support of the application for summary judgment, without any demur from the attorneys who had delivered it.
- [18] The attempt by the defendant’s current attorneys to now, more than a year after the delivery of the plea and after everything that has taken place since, to rely on the typographical error referred to above as a purported defence, is so opportunistic that it amounts to an abuse of process. It has no real foundation and should be rejected.
- [19] In the reasons for judgment, the basis for having granted summary judgment had been fully set out. No substantive element thereof has been attacked during the application for leave to appeal. The summary of the position still remains that the defendant has simply not disclosed any defence to the plaintiff’s claim.
- [20] I find that the application for leave to appeal is both fatally flawed and without any merit as contemplated in Section 17(1) of the Superior Courts Act[3].

Costs

[21] There is no reason why costs should not follow the event. The defendant was forewarned that her application was fatally defective. In addition, arguments which amount to an abuse of process were relied on, which were clearly without merit. In the exercise of this court's discretion, this justifies a punitive costs order.

Order

The application for leave to appeal is dismissed with costs on the scale as between attorney and client.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 24 July 2025

Reasons

delivered: 29 July 2025

APPEARANCES:

For the Plaintiff:

Adv J Eastes

Attorney for the Plaintiff:

Delberg Attorneys, Pretoria.

For the Defendant:

Adv S N Lebilwane

Attorney for the Defendant:

Tswago Inc, attorneys, Pretoria

[1] 2024

(1) SA 183 (GP).

[2] 34 of 2005.

[3] 10 of 2013.

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Prepared on 14 October 2026 · Esheria