

SOUTH AFRICA / JUDGMENT

Pretorius v Firststrand Mortgage Company (RF) (Pty) Ltd (Reasons) (1127/2024)

[2025] ZAWCHC 275 (19 June 2025)

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COURT

Western Cape High Court, Cape Town

BEFORE

P. S. Van Zyl

CASE / FILE NUMBER

1127/2024

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case number: 1127/2024

In the matter between:

CHARMAINE PRETORIUS

Applicant

and

FIRSTSTRAND MORTGAGE COMPANY (RF) (PTY) LTD

Respondent

REASONS DELIVERED ON 19 JUNE 2025

VAN ZYL AJ:

The application for leave to appeal

1. On 6 June 2025 I refused the applicant's application for leave to appeal against orders granting summary judgment against her in favour of the respondent, and declaring the immovable property registered in her name specially executable under Rule 46A, together with ancillary relief.

2. I refused the application for leave to appeal expressly on the basis that, in my view, there was no reasonable prospect that another court would come to a different conclusion, as contemplated in section 17(1)(a)(i) of the Superior Courts Act 10 of 2013. The applicant subsequently requested reasons for the refusal.
3. At the hearing of the application for leave to appeal, the applicant essentially reargued the case she presented to the Court at the hearing of the main application, particularly in relation to service of the respondent's letter of demand under section 129 of the National Credit Act 34 of 2005. She did it in her customary painstaking and thorough manner, but it remained the same case nonetheless.
4. In *Cellsecure Monitoring and Response and others v South African Securitisation Programme (RF) Limited*^[1] a Full Court restated the principle that an appeal is a mechanism through which higher courts review decisions made by lower courts to ensure that the law has been correctly

applied and that justice has been achieved in the original proceedings. It is not a forum for the reintroduction of facts, arguments, or evidence that could have been presented during the initial hearing but were not. The function of an appellate court is to determine whether there were legal errors in or misapplication of the law that materially affected the outcome of the case. Its aim is not to provide an opportunity for a second trial and for the re-litigating of factual matters already addressed by the lower

court.

5. The Court held:^[2]

"[42] The appellants' approach mirrors an attempt to rehear the application for summary judgment. In such applications, the plaintiff presents its case, and the defendant has the opportunity to respond with a bona fide defence. If the defence is insufficient, the Court grants summary judgment. However, this does not allow the defendant to indefinitely challenge the plaintiff's claim, nor does it permit new defences or arguments to be raised after the Court's ruling. Similarly, the appeal process should not serve as a forum for re-arguing a case that has already been adjudicated."

- ^[43] Allowing the appellants to re-argue their case on appeal would undermine the principle of finality in litigation. Repeatedly challenging a decision by re-presenting the same issues would delay justice, burden the judicial system with unnecessary re-hearings, and increase the cost and duration of litigation."
6. The applicant's arguments are addressed in the judgment that was delivered on 11 March 2025 in the main application, in particular paragraphs 21 to 34 in relation to the section 129 notice. There is no need to repeat what was stated in the judgment, and nothing needs to be added thereto for the purposes of the application for leave to appeal, whether in relation to the section 129 argument (which remained the focus of the case) or in relation to the other grounds of appeal.

7. Should the applicant accordingly wish to seek leave to appeal from the Supreme Court of Appeal under section 17(2)(b) of the Superior Courts Act (which would be the next step available to her following this Court's refusal of her application for leave to appeal), this should be done on the basis of the reasons set out in the judgment in the main application.

Costs

8. This Court is unaware of any factors that would justify departing from the general rule that costs should follow the result. The indemnity agreement upon which the respondent sued provides for costs to be taxed on the attorney and client scale in the event of litigation. This applies to the application for leave to appeal too, and I accordingly refused that application with costs on the scale as between attorney and client.

P. S. VAN ZYL

Acting Judge of the High Court

Appearances:

The applicant in person

For the respondent: Mr W. Jonker, instructed by Minde Schapiro & Smith

[1] [2025] ZAGPPHC 98 (31 January 2025) paras 12-15.

[2] At paras 42-43. Emphasis supplied.

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