

SOUTH AFRICA / JUDGMENT

Smith and Others v Sasfin Bank Limited and Another (Leave to Appeal) (25458/21) [2024] ZAGPPHC 34 (25 January 2024)

[2024] ZAGPPHC 34

COURT

North Gauteng High Court, Pretoria

BEFORE

Omphemetse Mooki

CASE / FILE NUMBER

25458/21

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, PRETORIA

Case No: 25458/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

SIGNATURE

DATE: 25 January 2024

In the matter between:

DEON SMITH

1ST APPLICANT

ELLEN LOUISE SMITH

2ND APPLICANT

NADELEI CC

3RD APPLICANT

and

SASFIN BANK LIMITED

1ST RESPONDENT

SUNLYN (PTY) LTD

2NDRESPONDENT

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI J

1 The applicants sought leave to rescind default judgements against them at the instance of the first respondent. The application was refused. They now seek leave to appeal.

2 The grounds of appeal are essentially that:

The court ought to have found that the applicants did not have knowledge of the proceedings leading to judgement being made

against them.

2.2 The way the two default judgements were given.

2.3 The court went beyond what is required regarding the requirement for disclosure of a bona fide defence.

2.4 The applicants met the requirements for rescission in terms of the common law, and that the court did not take this into account.

3

The applicants failed to substantiate several averments in their application. For example, the absence of confirmation that the master sale agreement was intended to be a different instrument. There was no confirmation by their erstwhile

attorneys. There is no suggestion that various communication addressed to them was not made.

4

The delay in bringing the application is extreme and it makes no difference whether the application was premised on Rule 31(2)(b),

Rule 42, or the common law.

5

The plaintiff issued summons against the three defendants. The plaintiff obtained default judgement against each defendant.

The applicants have not shown that the first respondent obtained default judgement other than in terms of the summons.

6

The applicants have not met the stringent requirement for the grant of leave to appeal. They have not shown that the facts and the law are such that a court of appeal could reasonably arrive at a conclusion different to that of this court.

7

The judgement was ready for delivery on 27 October 2023. It appears that the parties were not notified at the time.

8

I make the following order:

8.1 The application is dismissed.

8.2 The applicants are ordered to pay the costs of the first respondent, jointly and severally, the one paying to be absolved.

Omphemetse Mooki

Judge of the High Court

Heard on: 10 October 2023 Delivered on: 25 January 2024 For the Applicants: J. H. Sullivan

Instructed by: Waldick Jansen van Rensburg Inc. For the first Respondent: E. Fasser Instructed by: Wright Rose Innes Inc.

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