

SOUTH AFRICA / JUDGMENT

Timac Agro South Africa (Pty) Ltd v Nel (3379/2020) [2024] ZAFSHC 222 (19 July 2024) [2024] ZAFSHC 222

COURT

Free State High Court, Bloemfontein

BEFORE

Mhlambi

CASE / FILE NUMBER

3379/2020

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**IN THE HIGH COURT
OF SOUTH AFRICA,
FREE STATE
DIVISION, BLOEMFONTEIN**

Reportable:

NO
Of Interest to other
Judges: NO
Circulate to
Magistrates: NO
Case
No: 3379/2020
In

the matter between:

TIMAC
AGRO SOUTH AFRICA (PTY) LTD
Plaintiff
and
THEUNIS
LODEWYK ADRIAAN NEL
Defendant
HEARD

ON:

19 JULY 2024

JUDGMENT

BY: MHLAMBI, J

APPLICATION FOR LEAVE TO APPEAL

[1] This an application for leave to appeal against a judgment and order granted on 07 December 2023. The order reads as follows:

“1. The plaintiff’s action is declared to have been issued prematurely.

2. The plaintiff may not commence any legal proceedings to enforce the agreement between the parties before:

2.1 First providing the defendant with a notice as contemplated in section 129(1)(a) of the National Credit Act 34 of 2005; and

2.2 Meeting any further requirements set out in section 138(1) of the National Credit Act 34 of 2005.

3. The plaintiff to pay the costs of suit.”

[2] The application is predicated on the provisions of section 17(1) read with section 17(6)(a) of the Superior Court Act 10 of 2013, (“the Act”), for leave to appeal to the full court of this Division or the Supreme Court of Appeal.

[3] The application is opposed. On 27 February 2024 I gave a directive that the parties should file heads of argument as I intended to dispose of the matter in terms of section 19(1)(a) of the Act. The applicant filed both heads and replying heads of argument to the respondent’s heads of argument. Both sets of the heads of argument are extensive. The applicant made persuasive arguments that, in the light of the order made, the court should have postponed or adjourned the trial to enable the plaintiff to comply with the provisions of the National Credit Act, (“the NCA”), whereafter the plaintiff would have been entitled to resume the action. This argument was based on the provisions of section 130(4)(b) of the NCA that if the credit provider has not complied with the relevant provisions of that Act, the court must adjourn the matter before it; and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed.

[4] In the light of the above, I am therefore of the view that the applicant has reasonable prospects of success in the appeal and the application for leave to appeal should be granted.

[5] I therefore make the following order:

Order:

1. The application for leave to appeal to the full bench of the Free State Division of the High Court is granted.

2. Costs of this application shall be costs in the appeal.

MHLAMBI, J

On behalf of the plaintiff: Adv. DD Swart Instructed by: Salley's Attorneys Salley's Yamaha Building 58 Dan Pienaar Drive Bloemfontein On behalf of the Defendant: Mr HSL Duplessis Instructed by: Blair Attorneys 32 First Avenue. Westdene Bloemfontein

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Prepared on 11 October 2026 · Esheria