

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 2022/26671

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

DATE

SIGNATURE

JUJDEESHIN KUNKOON NO

First Plaintiff

(ID NO: 6[...])

In capacity as trustee of MERGENCE AFRICA
PROPERTY INVESTMENT TRUST (IT 11263/2006)

RIDWAAN ASMAL NO

Second Plaintiff

(ID NO: 7[...])

In capacity as trustee of MERGENCE AFRICA
PROPERTY INVESTMENT TRUST (IT 11263/2006)

PETERSEN, ISAK SMOLLY NO

Third Plaintiff

(ID NO: 7[...])

In his capacity as trustee of MERGENCE AFRICA
PROPERTY INVESTMENT TRUST (IT 11263/2006)

AZIZOLLAHOFF, BRIAN HILTON NO

Fourth Plaintiff

(ID NO: 6[...])

In his capacity as trustee of Mergence Africa
Investment Trust (IT 1126/2006)

And

TSHOLOBA (PTY) LTD

First Defendant

CHERE JOSEPH SENZANI

Second Defendant

(ID NO: 6[...])

JUDGMENT
APPLICATION FOR LEAVE TO APPEAL

This Judgment has been delivered extempore on 07 March 2025 and uploaded to the digital data case of the High Court of South Africa, Gauteng Division, Johannesburg on 11 March 2025 and by email to the parties

THE ORDER

1. The application for leave to appeal is dismissed.
 2. The defendants will bear the costs of the application for leave to appeal.
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SUTHERLAND DJP:

[1] Before me is an application for leave to appeal to against a summary judgment order granted by my brother Maubane AJ. He is regrettably unavailable to hear this application for leave to appeal and it is for that reason that it comes before me.

[2] The judgment was given on 17 August 2023. The application for leave to appeal is being heard on 07 March 2025.

[3] The judgment addresses a claim for summary judgment arising out of a lease. It was alleged that certain sums were owing and in the plea to that claim the defendants raised as their defence that they did not owe the sums claimed but owed a lesser sum. The lesser sum was not identified, but insofar as the plea is concerned a narrative of the circumstances giving rise to the dispute given in which it was indicated that two parties were not ad idem on the date that the premises had been vacated. The plea also acknowledged that there was an arrears owing at the time of the departure.

[4] What took place in the course of the hearing, as one learns from both the affidavits and from the judgment of Maubane AJ, is that the plaintiff then addressed the defence raised and by reference to the accounts that were attached to the papers computed a sum which on the version of defendant would have been owing. It was therefore inferred from that the undisclosed sum of what was admitted to be owing would on those facts amount to the sum of R576 994.10 (five hundred seventy-six thousand nine hundred ninety-four rand and ten cents). Ultimately the judgment granted was for the amount calculated on that basis and on the balance of the claim leave to defend was granted.

[5] What now takes place is an application for leave to appeal against the judgment which granted, partially summary judgment, and partially leave to appeal on the balance of the claim.

[6] The contention advanced in notice of appeal is that it was wrong of the Court a quo not to have given leave to appeal on the totality of the claim and it was wrong to have granted a partial relief. It is not entirely clear what the juridical premise is for that contention but it certainly is inconsistent law and practice where frequently partial summary judgment orders are made for sums which are admitted.

[7] In this court a point, ostensibly not raised a quo, was advanced. This was that the computations of the plaintiff cannot be relied upon; ie the calculation of the lesser sum owing, by inference from the defendants admissions in the plea. There is a dispute between the parties as to whether or not that sum is accurately calculated. That was not an issue which was raised before the Court a quo and as pointed out in argument, if there is a computation error in an order, the remedy for that is a Rule 42 application to vary it in order to correct it. It does not give rise to an appeal point.

[8] On the appeal point, which was effectively: Was there a bona fide defence, the judge in my view, generously, despite the fact that the defendants did not identify exactly what was indeed owed, accepted that they should be given an opportunity to challenge the balance of the full amount which was claimed by the plaintiff and then gave judgment on a lesser sum which by process of inference was consistent with their admission of liability in some undisclosed lesser sum.

[9] In my view, it is unlikely that a Court of Appeal is inclined to vary this judgment in respect and for that reason the threshold for leave to appeal has not been met. In my view, the matter should be dismissed with costs.

[10] Accordingly, the order which I therefore give now is this:

3. The application for leave to appeal is dismissed.
4. The defendants will bear the costs of the application for leave to appeal.

ROLAND SUTHERLAND
DEPUTY JUDGE PRESENT
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES:

DATE OF HEARING: 07 MARCH 2025

DATE OF JUDGMENT (EXTEMPORE): 07 MARCH 2025

DATE OF WRITTEN JUDGMENT: 11 MARCH 2025

PLAINTIFFS (RESPONDENTS IN THE APPLICATION FOR LEAVE TO APPEAL):

ATTORNEY: REAAN SWANEPOEL INCORPORATED

COUNSEL: ADV G DOBIE

DEFENDANTS (APPLICANTS IN THE APPLICATION FOR LEAVE TO APPEAL):

ATTORNEY: SHAPIRO & LEDWABA INC ATTORNEYS

COUNSEL: ADV D B MELAPHI