

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023-062743

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED. YES / NO
15/11/2024	
DATE	SIGNATURE

In the matter between:

ESSOP SABEEHA

APPLICANT

And

HAFFEJEE ZIYAAD ASHRAF ALI

RESPONDENT

J U D G M E N T

MABESELE J:

[1] This is an application for leave to appeal against the whole of my judgement and order. The judgement and order was granted in favor of the respondent due to persuasive argument by the respondent's Counsel that, since the marriage between the applicant and respondent was dissolved by the issuance of a Talaq, the court has no jurisdiction to entertain rule 43 application. The applicant's counsel, who received a brief on the eleventh hour to argue the applicant's case, was unable to persuade me otherwise.

[2] The applicant's attorney has raised important issues, both in his grounds for leave to appeal and during argument. He substantiated his argument with relevant case law. Regrettably, some of these issues were not raised by his predecessor during rule 43 application. In any event the respondent's counsel argued, rightly, that rule 43 orders are not appealable. In this regard, she sought reliance on numerous cases, including the Constitutional Court judgement of S V S and Another 2019(6) SA 1(CC) and Section 16(3) of the Superior Court Act 10 of 2013.

Having considered the argument and submissions made by both counsel, I come to the following conclusion.

1. Leave to appeal is refused with costs, including the costs of counsel on scale B.


M.M MABESELE

(Judge of the High Court Gauteng Local Division)

Appearances

On behalf of the Applicant	: Mr S Dollie
From	: Shaheed Dollie Inc. Attorneys
On behalf of the Respondent	: Adv. A Saldulker
Instructed by	: N. Moola Incorporated
Date of Hearing	: 14 November 2024
Date of Judgment	: 15 November 2024