

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2023-098436

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

Date: 3 March 2025 E van der Schyff

In the application for leave to appeal:

AHMED CARRIM N.O.

First Applicant

MUSTAFA MOHAMED N.O.

Second Applicant

BP JEAN AVENUE CC (in liquidation)

Third Applicant

and

BP SOUTHERN AFRICA PROPRIETARY LIMITED

First Respondent

VEECO HOLDINGS PROPRIETARY LIMITED

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Third Respondent

JUDGMENT

Van der Schyff J

- [1] The applicants apply for leave to appeal against the judgment and the orders handed down on 20 January 2025. The applicants in the application for leave to appeal were the applicants in the main application.
- [2] The applicants contend that I erred in finding that the jurisdictional requirements of section 341(2) of the Companies Act 61 of 1973 ("Companies Act") were not met when I dismissed the main application.
- [3] They submit that section 341(2) of the Companies Act had to be interpreted to align with the provisions of section 227 of the 1948 Act on which the 1973 Companies Act was premised and the previous 1955 South African Companies Act.
- [4] The applicants contend that this matter and the court's finding raise a novel point and that the Supreme Court of Appeal should have the opportunity to interpret section 341(2) of The Companies Act.
- [5] The principles that a court of law must apply in considering whether leave to appeal stands to be granted are trite and need not be repeated here. I set out the reasons for my findings in the written judgment, and these also need not be revisited. The legislature's language is unambiguous and clear. The legislature deliberately refrained from repeating or re-inserting the previous statutory provisions *verbatim* in section 341(2) of the Companies Act. Where the legislature chose not to uphold the *status quo* preceding the promulgation of a new Act, a contextual interpretation of the 'new' statutory provision in its current form in the context of the 1973 Companies Act will not benefit the applicants. I am not of the opinion that the appeal would have a reasonable prospect of success, and the application for leave to appeal stands to be dismissed with costs.
- [6] The complexity of the application does not justify the costs of two counsel.

ORDER

In the result, the following order is granted:

- 1. The application for leave to appeal is dismissed with costs on scale B.**



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicants:	Adv. J. Hershensohn SC
With:	Adv. R. de Leeuw
Instructed by:	Barnard & Patel Inc.
For the first respondent:	Adv. A. Govendor
Instructed by:	Edward Nathan Sonnenbergs Inc.
Date of the hearing:	25 February 2025
Date of judgment:	3 March 2025