



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Case No: 2024 - 022707

31/3/2025
DATE

SIGNATURE

In the matter between –

YAFA HOLDINGS (PTY) LTD t/a

APPLICANT

FUEL SOLUTIONS

AND

MERCHANT WEST (PTY) LIMITED

1ST RESPONDENT

OPTICAL MEDIAWORX LOGISTICS (PTY) LTD

2ND RESPONDENT

NGONIDZASHE FERRIS RUTSITO

3RD RESPONDENT

RAIN FORESTS OF SOUTH AFRICA TRADING

4TH RESPONDENT

(PTY) LTD

JUDGMENT

MOORCROFT AJ

Summary

Application for leave to appeal – section 17(1)(a)(i) and (ii) of the Superior Courts Act - reasonable prospect of success or some other compelling reason why the appeal should be heard

No exceptional circumstances meriting leave to appeal on costs only – section 16(2)(a)(ii) and (ii) of the Superior Courts Act

No reasonable prospect of success identified and no compelling circumstances found to exist

Order

[1] In this matter I make the following order:

- 1. The late filing of the application for leave to appeal is condoned;*
- 2. The application for leave to appeal is dismissed;*
- 3. The applicant is ordered to pay the costs of the application on scale C.*

[2] The reasons for the order follow below.

Introduction

[3] This is an application for leave to appeal against a decision handed down by me on 26 March 2024 in the Urgent Court. The application was filed late by a few days and the applicant's condonation application is not opposed by the first respondent. The late filing did not occasion any prejudice and is condoned.

[4] The order I made read as follows:

- 1. Having read the papers, considered the matter and heard counsel, the following order is made:*
- 2. The application by the applicant, YAFA HOLDINGS (PTY) LTD t/a FUEL*

SOLUTIONS brought under the above case number is removed from the urgent court roll of 25 March 2024;

3. *The applicant YAFA HOLDINGS (PTY) LTD t/a FUEL SOLUTIONS is directed to pay the costs of the first respondent including the costs of appearance on 26 March 2024*

[5] Matters in the urgent court are automatically set down and the matter appeared on the roll of the urgent court published on 22 March 2024.

[6] An initial application between Merchant West (Pty) Ltd and three respondents (Optical Mediaworx Logistics (Pty) Ltd, Ngonidzashe Ferris Rutsito and Rain Forests of South Africa Trading (Pty) Ltd) was first uploaded to CaseLines on 29 February 2024. The present applicant brought an application for leave to intervene that was uploaded on 15 March 2024. The present first respondent's answering affidavit to the intervention application was uploaded on the same day. This judgment deals with the intervention application only.

[7] The applicant did not file a replying affidavit but on 18 March 2024 it gave notice that it was withdrawing the urgent application for leave to intervene that was on the roll for 26 March 2024. The first respondent replied on the 18th, indicating that the notice was not accompanied by a tender for costs and that it was awaiting such a tender.

[8] When the matter was called on the 26th there was initially no appearance for the applicant. Counsel for the first respondent appeared and advised that the application had been withdrawn without a tender for costs, and that the notice was filed out of time as the matter was already on the roll.

[9] The withdrawal of the application is governed by rule 41. The rule provides:

“(1)(a) A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party.” [emphasis added]

...

(c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs.”

[10] The applicant did not seek the leave of the court and did not have the consent of the first respondent. I granted an order removing the matter and ordering the applicant to pay the costs of the first respondent. The order was made in the absence of the applicant on whose behalf there was no appearance.

[11] Subsequently the counsel for the applicant appeared and I recalled the first order. Counsel presented argument on the question of costs and after hearing argument I made the order set out above.

[12] Section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard. The requirement that leave must be obtained serves the purpose of a gatekeeper and ensures that valuable judicial resources are not wasted.¹

[13] An appeal lies against the decision² of the court and not against the reasons for the decision.³

[14] In *Ramakatsa and others v African National Congress and another*⁴ Dlodlo JA summarised the authorities as follows:

“[10] .. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[15] Section 16 (2) of the Superior Courts Act provides that an appeal may be dismissed on the ground that the issues are of such a nature that the decision sought will have no practical effect or result. Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.

¹ *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd* 2013 (6) SA 520 SCA para 24.

² Section 16 (1) (a) of the Superior Courts Act.

³ *Medox v Commissioner, South African Revenue Service* 2015 (6) SA 310 (SCA) para 10 and *Tecmed Africa (Pty) Ltd v Minister of Health and Another* [2012] All SA 149 (SCA) para 17.

⁴ *Ramakatsa and others v African National Congress and another* [2021] JOL 49993 (SCA), also reported as *Ramakatsa v ANC* 2021 ZASCA 31.

[16] Mr Mhango on behalf of the applicant submitted that leave to appeal to the Full Court should be granted, with an order that the costs be reserved. He argued that there are reasonable prospects of success on appeal, and that there are exceptional circumstances that merit the granting of leave even though the appeal is only against a cost order. He submitted that the conduct of the first respondent was to blame for the state of affairs, and that the proper course to follow on 26 March 2024 would have been to remove the matter from the roll and to require the first respondent to set it down in terms of rule 41(1)(c).

[17] Rule 41(1)(c) does not preclude a party from appearing to argue the costs in an application withdrawn shortly before the allocated hearing date. The Court dealing with the matter is in a position to hear argument on costs and to grant an order.

[18] In my view requiring the first respondent to accept the withdrawal and to then set the cost argument down for another day would require a second Judge to read the papers, and the parties to come to Court on another day to argue the matter, thus unnecessarily burdening the court system and incurring extra costs for all parties.

[19] I conclude that there are no reasonable prospects of success on appeal, and that there are no exceptional circumstances meriting leave on a question of costs only.

[20] Mr Venter who appeared for the first respondent argued that the application be dismissed with costs on scale C as the matter was of sufficient importance and complexity to merit costs on the higher scale. Mr Mhango on the other hand submitted that if the application were to be dismissed, the costs should be on the lower scale.

[21] In my view a costs order on scale C is justified firstly because of the complexity of the application and secondly because the application should never have been brought under circumstances where only a cost order was sought to be appealed in the absence of identifiable exceptional circumstances.

[22] I therefore make the order in paragraph 1 above.


MOORCROFT AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **31 March 2025**

ATTORNEY FOR THE APPLICANT:

MD MHANGO

INSTRUCTED BY:

BAZUKA & CO INC

COUNSEL FOR THE FIRST RESPONDENT:

AJ VENTER

INSTRUCTED BY:

UMS ATTORNEYS

DATE OF ARGUMENT:

28 MARCH 2025

DATE OF JUDGMENT:

31 MARCH 2025