



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

08 May 2025

DATE

SIGNATURE

Case No. B812 / 2023

In the matter between:

PRINCESS VUYISWA ZWANE

APPLICANT

and

ASTROTAIL 109 (PTY) LTD (In liquidation)
(Registration No.2013/100859/07)

FIRST RESPONDENT

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

SECOND RESPONDENT

SOUTH AFRICAN REVENUE SERVICE

THIRD RESPONDENT

JACOBUS JOHANNES NEL N.O

FOURTH RESPONDENT

(In his capacity as Trustee of the JJ Nel Junior Trust)

BRUNHILDA ELSE NEL N.O (In her capacity as Trustee of the JJ Nel Junior Trust)

FIFTH RESPONDENT

TIELMAN CHRISTIAAN ROOS N.O (In his capacity as Trustee of the JJ Nel Junior Trust)

SIXTH RESPONDENT

HENNIE DANIEL VERMAAK N.O (In his capacity as Trustee of the JJ Nel Junior Trust)

SEVENTH RESPONDENT

FUCHSIA TRADING (PTY) LTD
(Registration No.2003/027649/07)

EIGHTH RESPONDENT

JUDGMENT

NEUKIRCHER, J

1] On 26 July 2024, I handed down judgment in the main application in which I dismissed the application, made no order on the counter-applicant and granted a specific costs order against the applicant. The basis upon which the application was dismissed was that I found that the applicant did not have *locus standi* to bring the business rescue application.

2] The applicant then filed an application for leave to appeal. It is common cause that this was out of time and an application for condonation was then duly launched. This was opposed by the fourth to eighth respondents who filed lengthy affidavits in an attempt to persuade the court that the application for leave to appeal was doomed

on the merits, as well as on the point *in limine*, and that there were no prospects of success on appeal.

3] The fourth to eighth respondents also filed a supplementary affidavit in which they sought to place new information before me which they argued had a bearing on the outcome of the application for leave to appeal, and which they argued was even more determinative of the fact that there were no prospects of success on appeal on the merits of the application itself.

4] I must point out at this stage that it was argued before me that even though the judgment dismissed the application on the point *in limine*, and that the court did not deal in any substantive manner with the merits of the business rescue application, it is the order, and not the reasons, that are appealed against.

5] I was thus urged to take the lack of merits of the application itself into account when deciding whether to grant leave to appeal or not.

6] But in my view, to decide merits of the application for purposes of the decision on leave to appeal is not appropriate in this matter. I must decide whether leave to appeal should be granted on the facts I took into account when dismissing the application itself – the merits did not form part of that decision.

7] Insofar as the application for leave to appeal is concerned, I am of the view that condonation should be granted for the late filing of the application and I am also of the view that there are prospects of success on appeal and that leave to appeal should be

granted to the Full Court of this Division. The fourth to eighth respondents may then, if they decide to do so, seek leave to adduce further evidence on appeal, and it will be the decision of the appeal court whether to accept or refuse the further evidence.

ORDER

1. Condonation is granted for the late filing of the application for leave to appeal.
2. Leave to appeal is granted to the Full Court, Gauteng Division, Pretoria.
3. Costs are costs in the appeal.


B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the 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 for hand-down is deemed to be 8 May 2025.

For the Applicant	:	Adv E Coleman
Instructed by	:	Ralulimi Attorneys Inc.
For the 4 th to 8 th Respondents	:	Adv MP Van Der Merwe SC assisted by Adv E Ward
Instructed by	:	Macrobert Attorneys
Matter heard on	:	29 April 2025
Judgment date	:	08 May 2025