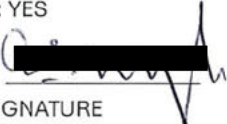


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: 2023-11479

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
08/05/2025	
DATE	SIGNATURE

In the matter between:

MARK PHILLIPS

Applicant

and

ALLCOPY PUBLISHERS (PTY) LTD

First Respondent

JURGENS BASSON

Second Respondent

JACO ODENDAAL

Third Respondent

CONRAD BOTHA

Fourth Respondent

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on Case Lines. The date and time for hand-down is deemed to be 10H00 on 9 May 2025

JUDGMENT

MYBURGH, AJ:

1. This is an application for leave to appeal against an order in terms of which I granted a stay of interdict proceedings pending the hearing of an application by the Copyright Tribunal for the grant of a compulsory license in respect of certain literary works.
2. I believe to appropriate to mention at the outset that I was informed from the bar that the application for a compulsory license had in fact been heard by the Tribunal and that a judgment (in favour of the current respondents) had been handed down by the time this application came before me. The relevance will become apparent.
3. The parties were *ad idem* that the grant or refusal of an application to stay proceedings entails the exercise of a discretion in the true sense and hence that the test to be applied is a more stringent one than that which ordinarily applies in respect of applications for leave to appeal. The test to be applied is accordingly whether I acted on an incorrect understanding of the facts or a wrong principle; alternatively whether there is some other compelling reason to grant leave – typically that matter raises an issue of such broad interest that it should properly receive the attention of a higher court.
4. It was not suggested that I had erred in relation to the facts. I will accordingly say no more in that regard.
5. As to the applicable principle, or principles, Mr Mechau SC who appeared for the applicant, drew my attention to the decision in CIPLA¹, in particular paragraph 41 of that judgment. Mr Sholto-Douglas SC, who appeared for the respondents, argued that that principle was not of application. He also argued that leave should not be granted as the temporary license granted by the Tribunal would expire before the appeal was likely to be heard – this on account of the lengthy rolls and associated delays.

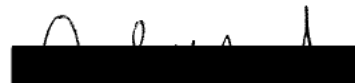
¹ Cipla Medpro (Pty) Ltd v Aventis Pharma SA, Aventis Pharma SA and Others v Cipla Life Sciences (Pty) Ltd and Others (139/2012, 138/2012) [2012] ZASCA 108; 2013 (4) SA 579 (SCA) (26 July 2012)

6. In my view the fact that the license may potentially have run its course by the time an appeal would, in the ordinary course, be heard is no answer – this notwithstanding that it is unlikely that an appeal would in fact be heard in those circumstances. I refer in this regard to section 18 (2) (a) of the Superior Courts Act.²
7. In my view the principles enunciated or referred to in CIPLA do not find application. In the first instance, I did not decide the claim for an interdict – which is what was in issue in CIPLA. Secondly, and assuming the issue to be relevant (as to which I have some doubt) , while it is so that proving and quantifying a claim for damages has some inherent difficulties when it comes to matters of this kind, those difficulties do not in any way approximate the difficulties which were in issue in CIPLA. On the contrary, there are numerous cases in which our courts have awarded damages based on the distribution of infringing copies. I am therefore not satisfied that there is any reasonable prospect that another court would find that I acted on an incorrect principle.
8. I am also not persuaded that the matter raises an issue which is of such interest or importance to the broader community that leave should be granted even though I might not be satisfied that the applicant enjoys reasonable prospects of success on appeal.
9. Another factor that weighs with me, albeit not decisively, is that the stay had already run its course when this application was argued. The setting aside thereof on appeal would accordingly not have any practical effect. That being so, I do not consider that it would be appropriate to burden an appeal roll with the matter.
10. In the circumstances I make the following the order:

² Act 10 of 2013.

ORDER

- a. The application is dismissed with costs, such costs to include the costs of two counsel.
- b. Counsel's charges will be taxable according to scale C.



G S Myburgh

**Acting Judge of the High Court
Johannesburg**

Date of Hearing: 10 March 2025

Date of Judgment:

Representation

For Applicant: R Michau SC

Instructed by: Hirschowitz Flionis Attorneys

For Respondents: A Sholto-Douglas SC assisted by L Kilmartin

Instructed by: Von Seidels Attorneys