

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
HELD AT PRETORIA**

CASE NO: 2022/059481

DOH: 20 JUNE 2025

DECIDED: 03 JULY 2025

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

[Redacted Signature]

SIGNATURE

03 JULY 2025
DATE

In the matter between:

TURNERS SHIPPING (Pty) LTD

Applicant

And

**COMMISSIONER FOR THE SOUTH
AFRICAN REVENUE SERVICE**

Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 03 July 2025.

ORDER

1. Leave is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.

JUDGMENT

Bam J

1. This is an application for leave to appeal to the Full Court of this Division, alternatively to the Supreme Court of Appeal. Applicant's grounds of appeal are set out in its Notice of Application for leave to appeal, filed on 13 August 2024.
2. Legislative provision for applications for leave to appeal is made in Section 17(1) (a) (i) and (ii) of the Superior Court Act¹. The applicable provisions may be summarized thus:

'Section 17 (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

(a) (i) the appeal would have a reasonable prospect of success; or

¹ Act 10 of 2013.

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;'

Summary of the parties' contentions

3. Applicant advances grounds on which it contends leave may be competently granted on both subsection (1) (a) (i) and (ii). The respondent is opposing the application. They cite the trite principle that an appeal lies against the order and not at the reasons. On the basis that the grounds advanced by the applicant would not change the order granted by this court, they say leave must be refused.

Test for leave to appeal

4. The test for leave to appeal is whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or a mere possibility of success². 'If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.'³

² *Mothuloe Incorporated Attorneys v Law Society of the Northern Province and Another* (213/16) [2017] ZASCA 17 (22 March 2017), paragraph 18.

³ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020).

Applicant's grounds

5. The applicant advances, *inter alia*, the following grounds in its application:
 - 5.1 The court erred in finding that the applicant falls within the definition of exporter;
 - 5.2 The Court erred in finding that the respondent has legal basis to hold the applicant liable as agent for payment of duties;
 - 5.3 The Court erred in finding that the applicant is not the person concerned for purposes of Section 76A;
 - 5.4 The Court erred in finding that the amount demanded is deemed to be duty for purposes of recoverability;
 - 5.5 The Court erred in finding that liability under Section 76A arises at the time of demand.
6. Applicant contends that as a result of misconstruing its conduct, the court came to the incorrect conclusion, presumably as to the applicant's liability.
7. I have carefully considered the applicant's grounds for leave. I am persuaded that another court may come to a different finding. Accordingly leave is granted to the Full Court of this Division.

Order

1. Leave is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.

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N.N BAM J

**JUDGE OF THE HIGH COURT
OF SOUTH AFRICA, GAUTENG
DIVISION, PRETORIA**

Date of Hearing: 20 June 2025

Date of Judgment: 03 July 2025

Appearances:

Applicant's Counsel: Adv J.P Vorster SC with him

Adv Adv L.K Olsen

Instructed by: EVH Inc Van Hyssteen
% Klagsbruin, Edelstein,
Bosman Du Plessis Inc
Nieuw Muckleneuk, Pretoria

Respondent's Counsel: Adv J Peter SC with him Adv

K Boshomane

Instructed by: MacRobert Attorneys
Brooklyn, Pretoria