

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 098393/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
24 July 2025	
DATE	SIGNATURE

In the matter between:

NOMCEBO NOTHULE NKWANYANA

First Applicant

EMAZULWINI PRODUCTION AND PROJECTS (PTY) LTD

Second Applicant

and

OPEN MIC PRODUCTIONS (PTY) LTD

First Respondent

AFRICORI SA (PTY) LTD

Second Respondent

***Delivered:** 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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 24 July 2025.*

Summary: Application for leave to appeal. The requirements of section 17 of the Superior Courts Act not met. Court empowered by rule 42(1)(b) to vary its order *mero motu*. Held: (1) The application for leave to appeal is refused. Held: (2) Paragraph 2 of the order is varied by deleting the phrase “which costs include

the costs of employing two counsel”. Held: (3) The applicant to pay the costs of this application on a scale of party and party taxable or to be settled on scale B, the one party paying absolving the other.

JUDGMENT LEAVE TO APPEAL

MOSHOANA, J

Introduction

[1] This is an application launched in terms of section 17(1)(a)(i) of the Superior Courts Act (“the Act”)¹. It must be declared upfront that the applicants, upon enquiry, informed this Court that the provisions of section 17(1)(a)(ii) do not arise as none of the grounds pursued by the applicants provides some compelling reasons for the appeal to be heard. Accordingly, the enquiry will be limited to the question whether the appeal, if leave is granted, would have a reasonable prospect of success.

Analysis

[2] Having perused the application for leave to appeal, the written submissions of the parties and considered all the grounds putted for to impugn the judgement and order, this Court is not of an opinion that the appeal for which leave is sought would have reasonable prospects of success. Having formed that opinion, as required by section 17(1)(a)(i) of the Act, leave to appeal may not be given. The application is bound to fail. During argument of this application, both parties were *ad idem* that at the hearing of the dismissed application, the respondent was not represented by two counsel. Such implied that paragraph 2 of the order constituted an ambiguity which requires a removal to achieve clarity. Rule 42(1)(b) of the Uniform Rules empowers this Court to *mero motu* vary an order. Regard being had to the provisions of section 16(2)(a) of the Act it would be impractical for this Court to ask the appeal Court to

¹ Act 10 of 2013.

correct the ambiguity on a costs issue. Accordingly, the phrase “which costs include the costs of employing two counsel” is excised from paragraph 2 of the order.

[3] Turning to the costs of the present application, two counsel appeared on behalf of the respondent. A submission was made that the opposing respondent should be awarded the costs of employing two counsel. This Court takes a view that the present application did not deserve employment of two counsel. Therefore, the opposing respondent is entitled to the costs of employing one counsel.

[4] Because of all the above reasons, I make the following order:

Order

- 1. The application for leave to appeal is refused.**
- 2. Paragraph 2 of the order made on 9 May 2025 is varied by deletion of the phrase “which costs include the employment of two counsel”.**
- 3. The applicants are to jointly but severally pay the costs of this application, the one paying absolving the other, on a scale as between party and party to be settled or taxed at scale B.**



**G N MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For the applicants:

Instructed by:

For the Respondent:

Instructed by:

Date of the hearing:

Date of judgment:

Ms Z Cornelissen.

Rosengarten & Feinberg, JHB.

Mr M R Maphutha with Mr A Seshoka

M Ramalivha Attorneys, Sandton

23 July 2025

24 July 2025