



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2025-118740

In the matter between:

UNITING REFORMED CHURCH IN SOUTHERN AFRICA:

CLANWILLIAM CONGREGATION

First Applicant

WILDEN HECTOR

Second Applicant

and

UNITING REFORMED CHURCH IN SOUTHERN AFRICA:

CLANWILLIAM PRESBYTERY

First Respondent

PEDRO ADEN OKTOBER

Second Respondent

KLAAS KEFFERS

Third Respondent

KYLE MENDOOR

Fourth Respondent

NADINE HECTOR

Fifth Respondent

UBENICIA SIEBRITZ

Sixth Respondent

JACOB KLAASE

Seventh Respondent

BILLY CLAASEN

Eighth Respondent

Heard: 4 August 2025

Delivered: Electronically on 6 August 2025

JUDGMENT

JONKER AJ:

[1] For convenience, I intend to refer to the parties as they were cited in the main proceedings. This is an application for leave to appeal by the eighth respondent in terms of Section 17(1) of the Superior Courts Act, no 10 of 2013, against my order granted 29 July 2025, where he was: (i) interdicted from disseminating, or commenting on the litigation pending between the second applicant and fifth respondent, including criminal-, protection order-, and divorce proceedings, whether online, on social media, or through any other medium; (ii) ordered to immediately remove all social media posts and public commentary made by him relating to litigation between second applicant and the fifth respondent, including Facebook and other platforms; (iii) ordered to pay the costs of the application on the ordinary scale C.

LEGAL POSITION

[2] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act 10 of 2013 which states as follows:

“Leave to appeal

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 (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- (b) the decision sought on appeal does not fall within the ambit of Section 16(2)(a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

[3] In *MEC for Health*¹, the Supreme Court of Appeal held that the test for granting leave to appeal is as follows:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal”.

[4] In *Acting National Director of Public Prosecutions*, the Full Bench held that:

“[25] The Superior Courts Act has raised the bar for granting leave to appeal. In *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*, Bertelsmann J held as follows:

‘It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might

¹ *MEC for Health, Eastern Cape v Mkhita* 2016 JDR 2214 (SCA) at para 16.

come to a different conclusion.....The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against”

Appealability of interim interdict

[5] In *Economic Freedom Fighters*², Khampepe ADCJ stated as follows:

“[49] The law concerning the appealability of interim interdicts is settled. Interim interdicts are generally not appealable. This is because interim interdicts are not final in nature; they are not determinative of the rights of the parties and do not have the effect of disposing of a substantial portion of the relief claimed.

[50] It is so that an interim order may be appealed if the interests of justice so dictate. The paramount test for the appealability of a particular interim interdict is whether it would be in the interests of justice for the interim interdict to be appealed in the light of the facts of its specific case. A court has a wide general discretion in granting leave to appeal in relation to interim interdicts. The appropriate test for the appealability of an interim interdict was perspicuously laid out by Moseneke DJC in OUTA³ where he affirmed that-

“[t]his Court has granted leave to appeal in relation to interim orders before. It has made it clear that the operative standard is ‘the interests of justice’. To that end, it must have regard to and weigh carefully all germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relevant and important consideration. Yet, it is not the only or always decisive consideration. It is just as important to assess whether the temporary

² *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* [2020] ZACC 10.

³ *National Treasury v Opposition to Urban Tolling Alliance* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (OUTA).

restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable”

[6] Accordingly, in determining what the interests of justice require, a court must have regard to, and carefully weigh, all relevant circumstances and factors. Inevitably, these factors will vary depending on the facts of each case.

[7] The test for the appealability of an interim order is whether it would be in the interests of justice, taking into account the factors set out by Moseneke DCJ in *OUTA*, as well as the specific circumstances and facts of the matter before me. Among the factors identified are the potential for irreparable harm if leave is not granted, the finality of the order, and the prospects of success.

[8] The interim interdict granted by this Court, is not final in effect, but only for the duration of the proceedings pending between the applicant and the fifth respondent. The interim interdict is also further limited to disseminating or commenting on the litigation currently pending between the second applicant and fifth respondent, including criminal-, protection order-, and divorce proceedings, whether online, on social media, or through any other medium. I do not see the potential of irreparable harm to the eighth respondent by not being able to comment on matters relating to the proceedings currently pending between the second applicant and the fifth respondent. The eighth respondent is not restrained from commenting on matters of public interest in general.

[7] In the notice of appeal, which is accepted by all should read an application for leave to appeal, the eighth respondent does not engage with the issue of the appealability of interim interdictory relief. No grounds are advanced to demonstrate that the order is immediate and substantial in effect, or whether the harm that flows from it is serious, immediate, ongoing and irreparable. This failure is, in itself, dispositive of the application for leave to appeal. I will however proceed to also deal with the eighth respondent's grounds of appeal as contained in the Notice.

Grounds set out in application for leave to appeal

[8] The grounds of appeal are couched in broad and vague terms, amounting to a re-argument of the merits of the application already decided. The approach adopted by the eighth respondent demonstrates a fundamental misunderstanding of the test for leave to appeal. A dissatisfied litigant cannot merely restate the arguments previously advanced in the hope that another court may arrive at a different conclusion. It must be shown that the appeal would have reasonable prospects of success or that some compelling reason exists why the appeal should be heard. No such showing has been made.

[9] It was argued in oral submissions that the proceedings against the eighth respondent amount to a SLAPP suit intended to suppress lawful public commentary. This contention is unsubstantiated. The papers before the court do not disclose any evidence of improper motive or abuse of process. No historical animosity or ulterior intent was pleaded or argued at the time of the application. The relief granted was strictly confined to posts in breach of section 12 of the Divorce Act and which violated the applicant's constitutionally protected rights to privacy and dignity. The suggestion of a SLAPP suit is speculative and unsupported.

[10] The court is further criticised for having misapprehended the principle of judicial independence, with reliance placed on *S v Mamabolo* 2001 (3) SA 409 (CC). The principle cited in *Mamabolo* pertains to the capacity of courts to withstand public criticism and does not create a license for private individuals to infringe the rights of others. The invocation of this authority is misplaced. The present matter involves the balancing of competing constitutional rights — not contempt of court nor criticism of judicial institutions.

[11] It was further contended that the applicant displayed selective enforcement by targeting the eighth respondent while ignoring similar publications by Media24 and Rapport. This argument is misguided. The applicant is entitled to seek relief against a party who is demonstrably infringing his rights. The fact that other persons or entities may also have published information — whether lawfully or not — does not immunise the eighth respondent from legal consequences. The existence of other infringers, even if assumed, does not amount to unequal treatment or selective enforcement by the court.

[12] The eighth respondent also argued that the applicant acted with double standards and that this litigation constitutes an attempt to silence a weaker critic. Again, no factual foundation was laid in support of this assertion. The law protects all persons equally from unlawful infringements of their rights. The eighth respondent's right to freedom of expression does not extend to the publication of material prohibited by statute or which unreasonably impairs the rights of others. Assertions regarding unequal treatment or improper motive are speculative and do not give rise to any appealable misdirection.

[13] It is further submitted that this court failed to give proper weight to the eighth respondent's right to freedom of expression under section 16 of the Constitution. The court disagrees. The judgment expressly acknowledged that freedom of expression is a fundamental right, but also observed that it is not absolute. The right was carefully weighed against the competing rights to privacy, dignity, and the statutory prohibition in section 12 of the Divorce Act. The conclusion reached was a proper one, grounded in law and the specific facts before the court.

[14] The contention that the applicant, as a religious leader, is subject to heightened public scrutiny does not entitle the eighth respondent to disregard the legal limits on commentary imposed by legislation and constitutional balancing. Public interest in addressing gender-based violence does not override an individual's statutory or constitutional rights. The second applicant is not immune from criticism — but that criticism must remain within lawful bounds.

[15] Lastly, it is argued that the court did not engage with the Facebook posts before making a finding of contravention. This is factually incorrect. The judgment explicitly records the nature, content, and timing of the posts — including reference to commentary which predated the Rapport article and extended beyond the lawful bounds of fair comment. The conclusion that the eighth respondent's conduct contravened section 12 was based squarely on the facts placed before the court.

[16] For all the above reasons, I am not satisfied that the eighth respondent has established reasonable prospects that another court would come to a different

conclusion, nor has he demonstrated any compelling reason why the appeal should be heard or that it is being interim in nature, in the interest of justice to do so.

ORDER

[17] The application for leave to appeal is dismissed with costs.

E JONKER
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicants:	Adv Kilowan
Eighth respondent:	In person