



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 2023-097427,
2023-097292, 2023-097111,
2023-097076, 2023-100081,
and 2023-100526**

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

13 AUGUST 2025

DATE


SIGNATURE

In the matter between:

DEGEFA SUGEBO LEMBORE

First Applicant

TEKETEL TUMIRE HAJISO

Second Applicant

ADEN AHMED OSMAN

Third Applicant

ABI OSMAN YUSUF

Fourth Applicant

TEMESGEN MATIWOS

Fifth Applicant

THOMAS GODISO

Sixth Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL: HOME AFFAIRS

Second Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Third Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Fourth Respondent

**HEAD: BOKSBURG CORRECTIONAL SERVICE
CENTRE, BENONI**

Fifth Respondent

**HEAD: MODDERBEE CORRECTIONAL SERVICE
CENTRE, BENONI**

Sixth Respondent

Coram: Mlambo JP, Twala J and Collis J

Delivered: This Judgment was handed down electronically by circulation to the parties' legal representatives by email and by uploading onto CaseLines/ CourtOnline. The date and time for hand down is deemed to be 10:00 am on 13 August 2025.

Summary: This Judgment concerns a leave to appeal application by the applicants, Mr Manamela and Advocate Vobi. They sought leave to appeal this Court's Costs Judgment and Order. The Costs Judgment followed the Court's Main Judgment and Order in which the Court, dissatisfied with the way the applicants handled the main application, made an order postponing the issue of costs until representations were made in terms of the Court's directive. In the Main Judgment, the Court found that the applicants' abused Court processes by using a "cut and paste" method in their papers. The Court directed the applicants to address the Court on this issue; however, they failed to comply with this directive. As a result, the Court handed down the Costs Judgment in which the Court found that the applicants' behaviour warranted a Costs order de bonis propriis on scale A.

The applicants sought leave to appeal on the grounds that the Court erred by handing down the Costs Judgment as section 18 of the Superior Courts Act was applicable and that the audi alteram partem was not extended to them.

The Court dismissed their application on the grounds that audi alteram partem was extended to them, but they failed to comply with the directive to address the Court before the Judgment was handed down. Furthermore, the Court dismissed their submission that section 18 was applicable based on the principle of judicial finality.

The Court was further of the view that there were no prospects of success at the Supreme Court of Appeal. Due to these reasons, their application was dismissed.

ORDER

The application for leave to appeal is dismissed, with costs on scale A.

JUDGMENT (ON COSTS) [LEAVE TO APPEAL]

MLAMBO JP (concurring Twala and Collis JJ)

Introduction

[1] Before this court is an application for leave to appeal brought in terms of section 17 of the Superior Courts Act 10 of 2013.¹ The applicants, Mr Manamela of MA Manamela Attorneys and Advocate Vobi, seek leave to appeal against this Court's Judgment and Order of 29 July 2024. For convenience they will be referred to as the applicants in this Judgment.

[2] The genesis of this application stems from this Court's Judgment of 8 February 2024 (the Main Judgment)² in which this court dismissed the applicants' clients' application. In that Judgment, this Court ordered that the issue of costs be postponed and be dealt with separately, that is, after the parties and the applicants, have filed representations on the issues mentioned in paragraphs 92 to 94 of the Main Judgment.

[3] In those paragraphs, this Court expressed concerns regarding the way the litigation had been conducted. The Main Judgment details the basis for these concerns, and it is not necessary to traverse those in this Judgment. Suffice to mention that this Court had formed the view that separate applications had initially been

¹ Superior Courts Act.

² *Lembore v Minister of Home Affairs* (2023-097427, 2023-097292, 2023-097111, 2023-097076, 2023-100081, 2023-100526) [2024] ZAGPJHC 102; [2024] 2 All SA 113 (GJ); 2024 (5) SA 251 (GJ).

initiated which were identical save for names and some minor personal details of the applicants' clients. We decided that this issue required further consideration and directed the applicants and their clients to file affidavits to explain why a finding should not be made that their conduct amounted to an abuse of the judicial process and further why a punitive order as to costs should not be made against them. We directed the applicants and/or their lawyers to file these representations within fourteen days from the date of the Judgment and the respondents within fourteen days thereafter.

[4] Subsequent to the handing down of the Main Judgment, an application for leave to appeal was filed by the applicants on behalf of their clients. This Court dismissed it on grounds that there were no reasonable prospects that the Supreme Court of Appeal would reach a different conclusion to this Court's reasoning and findings.³ The applicants leave to appeal put the process in paragraph four above on hold.

[5] The leave to appeal Judgment was handed down on 21 May 2024, but neither the applicants and/or the respondents filed any representations thereafter in compliance with the invitation to file representations specified in the Main Judgment.

[6] On 29 July 2024, we handed down our Judgment on the issue of costs as specified in the order in the Main Judgment. We refer to this Judgment as the "Costs Judgment." In that Judgment we ordered that Mr Manamela and Advocate Vobi pay the costs of the main application *de bonis propriis* on scale A and directed the Registrar of this Court to send a copy of this Judgment to the Legal Practice Council, the Minister of Justice and Constitutional Development and to the National Director of Public Prosecutions, for their information and consideration.

[7] The Costs Judgment is a fully reasoned Judgment with an elaborate exposition of the factual matrix in this matter and other matters in which the applicants were involved in this Court. In sum, we made a finding that the applicants had involved themselves in what is colloquially called a cottage industry practice. This in our view amounted to an abuse of the judicial process, hence the decision to order the applicants to pay costs *de bonis propriis*.

³ *Lembore and Others v Minister of Home Affairs* (Leave to Appeal) [2024] ZAGPJHC 502.

The applicants' submissions

[8] The applicants have filed separate heads of argument, but central to their submissions is that leave to appeal should be granted as this Court erred in its findings and that there are prospects of success that a different court will arrive at a different conclusion. I deal with their submissions separately.

[9] Advocate Vobi submits that this court erred on several grounds. First, he submits that the court erred in ordering him to pay costs *de bonis propriis*. This submission is based on the premise that paragraphs 92 to 94 of the Main Judgment did not name or invite him to file an affidavit but rather only invited the parties (their clients) and not him. He additionally submits that this court was compelled to apply the *audi alteram partem* rule and invite him to make those submissions. The further submission is that as they had lodged an application for leave to appeal to the Supreme Court of Appeal, this Court was barred from doing anything until that leave process was concluded.

[10] Manamela MA Attorneys makes four submissions for their leave to appeal. These submissions are divided on the following: the powers of a court to *meri motu* review pending cases, the importance of the applicants' right to the *audi alteram partem* rule, the importance of the *Biowatch*⁴ principle and the effect of a pending appeal on a Judgment.

[11] On the first ground, the applicants submits that this Court failed to provide them with the right to *audi alteram partem* as the court did not afford them the opportunity to submit affidavits as to why an adverse costs order should not be granted against them. The submission is that this failure breached this fundamental principle of natural justice. It is further submitted that in light of the *Biowatch* principle, when dealing with the issue of costs, Courts are required to consider the conduct of the parties and legal representatives, the presence or absence of technical success and the nature of litigants and the proceedings which this court did not. The submission is that the general rule in the awarding of costs is that parties seeking to assert constitutional rights should not be burdened with costs whether successful or not. Lastly, the

⁴ *Biowatch Trust v Registrar Genetic Resources* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

submission is that section 18 of the Superior Courts Act suspends the operation of a Court order when there is an application for leave to appeal. Thus, the filing of the application for leave to appeal to the Supreme Court of Appeal suspended the operation of the Main Judgment, so the argument goes.

Analysis

[12] Section 17(1) of the Superior Courts Act governs leave to appeal applications. In the leave to appeal Judgment dealing with the Main Judgment, we exhaustively dealt with the full ambit of section 17. We do not deem it necessary to cover the same ground in this Judgment. Our view is that this is essentially a separate aspect of the same matter.

[13] In so far as the law is concerned regarding these applications, we refer to *MEC for Health, Eastern Cape v Mkhitha*,⁵ where it was stated that:

“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.”

[14] Therefore, to prevail in an application for leave to appeal, the applicants must demonstrate a reasonable prospect or realistic chance of success on appeal. To reach that determination, this Court must first examine two crucial issues. First, whether this court neglected to provide the applicants with *audi*, and whether section 18 of the Superior Courts Act was applicable.

[15] The *audi alteram partem* principle is an important principle in our constitutional dispensation. It serves as the foundation for natural justice and ensures that fair processes take place.

[16] The applicants’ submission is that this court did not give them an opportunity to make submissions before adverse findings were made against them. This is patently

⁵ [2016] ZASCA 176.

incorrect. In the Main Judgment, this court recognising and giving effect to the *audi alteram partem* principle, directed the applicants and the respondents to address this Court on the issue of costs and the concerns it raised. In paragraph 94 of the judgment this Court said the following:

“We have therefore decided to suspend making an order as to costs and direct that the parties file further affidavits addressing this matter. The applicants are directed to file an affidavit to explain why a finding shouldn’t be made that their conduct amounted to an abuse of the judicial process and further why a punitive order as to costs shouldn’t be made against them and/or their lawyers. The applicants and/or their lawyers are to file these further representations within fourteen days from the date of this Judgment and the respondents must file their representations within fourteen days thereafter.”

[17] However, instead of complying with this invitation, they filed an application for leave to appeal. As already pointed out, that application was dismissed by this Court and instead of complying with the invitation to file representations regarding the costs aspect, the applicants decided to petition the Supreme Court of Appeal for leave to appeal. The simple truth of the matter is that the applicants, ignored the invitation to make representations regarding the costs aspect which was still pending.

[18] Furthermore, the submission made by Advocate Vobi that this court did not name him or specified who is supposed to file the affidavits or representations is also incorrect. In the Main Judgment this court made it clear that:

“The applicants and/or their lawyers are to file these further representations within fourteen days from the date of this Judgment and the respondents must file their representations within fourteen days thereafter.”

[19] Coming back to the second issue. Section 18 of the Superior Court Act which governs the suspension of court decisions pending appeal states in section 18(1) read with subsection 5 that:

“(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which

is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.”

“(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.”

[20] The Supreme Court of Appeal outlined the purpose of this section and acknowledged that it exists to protect litigants. The Court, in *Ntlemeza v Helen Suzman Foundation*⁶ explained that:

“The primary purpose of s 18(1) is to reiterate the common-law position in relation to the ordinary effect of appeal processes — the suspension of the order being appealed, not to nullify it. It was designed to protect the rights of litigants who find themselves in the position of General Ntlemeza, by ensuring that, in the ordinary course, the orders granted against them are suspended while they are in the process of attempting, by way of the appeal process, to have them overturned. The suspension contemplated in s 18(1) would thus continue to operate in the event of a further application for leave to appeal to this court and, in the event of that being successful, in relation to the outcome of a decision by this court in respect of the principal order. Section 18(1) also sets the basis for when the power to depart from the default position comes into play, namely, exceptional circumstances which must be read in conjunction with the further requirements set by s 18(3). As already stated and as will become clear later, the legislature has set the bar fairly high.”⁷

[21] Our view is that this Court was not barred from issuing the Costs Judgment when it did. The application for leave to the Supreme Court of Appeal was in relation to the merits part of the matter and the costs part remained pending. That being the case, after finalising the leave to appeal Judgment of the merits (Main Judgment), this Court was duty bound to finalise the matter and issue the Costs Judgment. That aspect

⁶ [2017] ZASCA 93; [2017] 3 All SA 589 (SCA); 2017 (5) SA 402 (SCA).

⁷ *Id* at para 28.

could not be left in abeyance indefinitely. The principle of finality of matters is foundational.

[22] This Court is therefore of the view that this application lacks merit and must be dismissed.

[23] In the circumstances the following order is made –

The application for leave to appeal is dismissed, with costs on scale A.



D MLAMBO
Deputy Chief Justice of the Republic of South Africa
(Formerly the Judge President of the Gauteng Division of the High Court)

Hearing:
Judgment:

(Dealt with on the Papers)
13 August 2025

Appearances

For Mr Moribolla Andrew Manamela:

Manamela MA Attorneys, Pretoria

For Mr Sinethemba Isaac Vobi:

Oni & Company Inc.

For First to Third Respondents:

Hephzibah Rajah
instructed by State Attorney, Pretoria