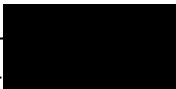




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 5796/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE: 13 August 2025	
SIGNATURE: 	

In the matter between

MINISTER OF POLICE

Applicant

And

MUZIWENKOSI MLANDELI MADONDO

Respondent

Summary: Leave to appeal-section 17(1)(a)-Superior Courts Act 10 of 2013. Main trial - misdirected itself. Court. Reasons proved unjustifiable. Application is dismissed.

LEAVE TO APPEAL: JUDGMENT

NTLAMA-MAKHANYA AJ

[1] This is an application for leave to appeal the judgment of this Court handed down on 10 July 2025 for consideration by the Full Court or Supreme Court of Appeal (SCA). This Court made an order and awarded damages for the claim of unlawful arrest without a warrant of search and arrest. The application is opposed by the Respondent for the grant of the leave to appeal. Both parties were represented by their original legal representatives.

[2] The gist of this application that will serve as the basis for its rationality is to establish whether:

[2.1] the order is appealable; and

[2.2] there would be reasonable prospects of success as envisaged in section 17(1) of the Superior Courts Act 10 of 2013.

[3] On the other hand, the Respondent opposed the application as having no basis in law and is without any prospects of success.

[4] The legal question raised is to determine whether the Applicant has made a proper case and demonstrated it for this Court to assess the appealability of this matter.

Grounds of appeal

[5] The Applicant raised a plethora of grounds of appeal, and I would summarise their gist as follows:

- [5.1] The facts of the case.
- [5.2] The merits and application of the law.
- [5.3] Excessive quantum; and
- [5.4] Punitive costs order.

[6] The basis of these grounds was based upon the Court having misdirected itself in the consideration of the factual and legal application of the law in the resolution of this matter.

[7] On the other hand, the Respondent opposed the application and raised the points of law regarding the failure of the Applicant to:

[7.1] adhere to Rule 49 of the Uniform Rules of the Court an application for leave to appeal the Civil Judgment of the High Court.

[7.2] indicate in the notice of motion whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address.

[7.3] file an affidavit in term of Rule 19(3)(b) in support of the application for leave to appeal.

[8] In essence, the content of the opposition is for the dismissal of the application of the leave to appeal as having no legal basis both in facts and the law. The Respondent also sent an e-mail message dated 11 July 2025 that he will abide by the judgment.

[9] It is important that I consider the rationality of the application of the leave to appeal.

Analysis

[10] This application is brought on basis of section 17(1)(a) of the Superior Courts Act 10 of 2003 (Superior Courts Act) which provides for the establishment whether:

- (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

[11] The Applicant argued that the Court misdirected itself in the application of both the facts and law. This Court is not to reproduce the reasons in the findings of the main trial that determined the unlawfulness of the Applicant's conduct in the execution of the search and arrest without a warrant. The grounds of appeal did not bring any other reasonable ground that could have persuaded this Court to grant or not to grant the appeal. The content of the grounds appeal was nothing more than a reiteration of the grounds of defence of this matter in the main trial. This Court had properly canvassed and analysed the application of the law as presented by the facts therein. In essence, this Court considered the overall purpose of the lack of compliance with the statutory framework regulating the conduct of the Police Service within the context of the Constitution, which is an overarching instrument that is extended to anyone who performs public service. Of particular significance in the main judgment was to draw comparative lessons of the pre-democratic jurisprudence which are still of relevance in South Africa today.

[12] It is, therefore, imperative that I deal with the basic principle regarding the appealability of the main judgment and establish whether there are any prospects of success in this matter.

[13] In the context of this application for leave to appeal, the significance of section 17(1)(a) of the Superior Courts Act has set the bar high which entails the application of the strict test in establishing whether there are any reasonable prospects of success. The

test is not implied from the potential to succeed in an appeal but whether there are legitimate prospects of success. The affirmation of the test was contextualised by Bricks AJ in *Makgotlo v S* [2025] ZAGHJHC at para 3 citing with approval Dlodlo J in *Ramakatsa v African National Congress* [2021] ZASCA 31 at para 8 and held:

“The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[14] Similarly, Shongwe JA in *Mothuloe Incorporated Attorneys v The Law Society of the Northern Provinces* [2017] ZASCA 17 at para 18 contextualised the test for the reasonableness of success and held it ‘is not a mere possibility of success or whether the litigant has an arguable case’. It is evident that this test does not entail an argument for reproducing the contention made in the main trial.

[15] Let me reiterate, the test is not for the Applicant to indirectly bring the merits of the arguments that were considered in the main trial. The Applicant in this application did not specifically deal with the order itself of this Court but framed the application by reproducing the defence in the main trial. In this instance, the Applicant, amongst others, still challenged (i) the consideration of the evidence of a single witness, (ii) the publication of the Defendant’s pictures in the media, (iii) facts about the terminology in the classification of the Defendant’s brother as an attorney or advocate, role of Mr Twala and Mr Mvelase, (iv) this Court misapplied the consideration of the test in respect of each of the claims raised by the Defendant, (v) the content of the charge of defeating the ends of justice and (vi) the Court misplaced the test used in civil claims which is based on a balance of probabilities and not on a proof beyond reasonable doubt.

I am not going to regurgitate the grounds because they have been properly expressed and given content within the overall framework of the legal system regulating Police conduct. The “*Zonke Phantsi*” parable does not even have the legal and constitutional status except as an indication of the abuse of the authority vested in the Police Service.

[16] The Applicant further requested reasons for the judgment that was granted *ex tempore* by this Court. The Applicant relied on the application of Rule 49(1)(a) of the Uniform Rules of the Court which provides:

(a) When leave to appeal is required, it may on a statement of the grounds therefore be requested at the time of the judgment or order.

(b) When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefore shall be furnished within 15 days after the date of the order appealed against.

[17] It is evident that this Rule is of greater significance for the determination of the leave to appeal. This Rule as is the case with the application of Rule 17(1)(a) is of importance for the Courts and not only this Court to be satisfied that there is compliance with the procedural framework that regulates the application for leave to appeal. I am also persuaded by the Defendant of having raised the point *in limine* regarding the application of Rule 49. This Rule was contextualised by Zono AJ in *AVBOB Funeral Services v Boniwe Eunice Buzani* Case No: 2810/2020 at paras 4-6 citing with approval Joyini AJ in *Municipality of Thabazimbi v Badenhorst* [2024] ZAGPPHC 212 at paras 12-15 and held:

“It does not help the applicant to marshal grounds of appeal [...] which have not been set out clearly and succinctly in the notice for leave to appeal, no matter how meritorious these might be. [...] application is replete with mere regurgitation of findings of fact and law contained in the judgment and does not embody the requisite grounds for leave to appeal. [...] a statutory requirement construed as

peremptory needs exact compliance for it to have the stipulated legal consequence, and any purported compliance falling short of that is a nullity. As a rule, non-compliance with a peremptory provision result in nullity. It flows here from that the filing of an application for leave to appeal without the necessary grounds of appeal is a nullity and must be taken not to have existed or taken place,” (all footnotes omitted, and emphasis added).

[18] In this case, the Applicant did not even file an affidavit that sets out in explicit terms the grounds of appeal. The Defendant, on raising this failure, Applicant relied on administrative operational reasons regarding the outcome of the main judgment. This Court refuses that operational reasons will supersede the content of the Rule. If this Court had to tip-toe around the Applicant’s administrative operations, the development of the rules of application for leave to appeal will remain stagnant without any future guidance for its interpretation.

[19] The Applicant further submitted that there is an already developed jurisprudence and its principles, which according to him, were a precedent setting for the determination of the quantum regarding the award of damages. The Applicant missed the basic principle of constitutional and statutory interpretation that each case is judged and determined according to its own merits. This means that the merits of each of the cases are not similarly situated for the determination of the award for damages. Nugent JA in *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at para 17 gave effect to this contention and held:

“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that,” (emphasis added).

[20] It is deduced from Nugent JA that the argument about comparable cases regarding the award of damages are not a precedent setting. The Applicant misplaced the content of the application of the principle regarding the award for damages. This principle entails both the personal and institutional independence of the judiciary in determining the content of dispute without any influence or bias. The principle of independence is envisaged in section 165 of the Constitution of the Republic of South Africa, 1996 (Constitution) and enables the courts to be free from all forms of influence in the process of judicial review in, amongst others, the award of damages which may not be of value in the resolution of dispute. However, it is also acknowledged that previous cases still carry value as they have set a framework for the substantive translation of the rigid principle of the law into practice. It is in this instance that history is used as a methodology for future interpretation of the law and not necessarily a final determinant of the current issue before the Court.

[21] The punitive costs order is justified in that the Applicant compromised the principles of the statutory framework that regulates his exercise of authority. The said framework gives effect to the overall scheme of the supremacy of the Constitution. The cost order needs no further justification because this matter could not have been brought back for a leave to appeal with no legal basis both procedurally and substantively except for the reproduction of the facts and argument made in the main judgment. Therefore, this application is an abuse of the court process which is not justified by any reasonable consideration of the importance of the costs in litigation.

[22] I am not persuaded that the Applicant has satisfied the requirements of section 17(1)(a)(i) of the Superior Court Act. The Applicant did not provide any legitimate reasons that may lead to the conclusion that there is a reasonable prospect of success with a different court reaching a different conclusion. In essence, at the risk of repetition, I found difficulty that this Court would have to regurgitate the grounds and reasons provided in the main judgment. The alleged misdirection of this Court in the application and assessment of the facts into law was informed by the critical analysis of the law including the jurisprudence which served as precedent setting regarding the application and

requirements of the execution of the arrest without a warrant. This application stands to be dismissed because it does not meet the test or any prospects of a different court arriving from a different conclusion to this Court.

[23] It is also imperative that the award of costs must not be considered as a way of getting back to the losing litigant. Thus, the cost award should be balanced against the importance of the law and its role in contributing to social change.

[24] Accordingly, it is ordered as follows:

[24.1] The application for leave to appeal is dismissed.

[24.2] The Applicant is ordered to pay the costs of this application on a party and party scale on Scale B and to include the costs of one Counsel where so employed.

Date Heard: 05 August 2025

Delivered: 13 August 2025



N NTLAMA-MAKHANYA
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Delivery: *This judgment is issued by the Judge whose name appears herein and is submitted electronically to the parties /legal representatives by email. It is also uploaded on CaseLines, and its date of delivery is deemed 13 August 2025.*

Date of Hearing: 05 August 2025

Date Delivered: 13 August 2025

Appearances:

Counsel for Applicant:

Advocate MD Magadlela

Instructing Attorneys:

Ndlebe Msuthu Inc Attorneys