

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2025-086260

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

In the matter between:

COLLINS PHUTJANE LETSOALO

Applicant

and

ROAD ACCIDENT FUND

First Respondent

THE BOARD OF THE ROAD ACCIDENT FUND

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 01 August 2025.*

Summary: Application for leave to appeal. Leave to appeal regime serves a significant purpose in the administration of justice sphere. It remains unhelpful for an applicant for leave to appeal to set out an array of grounds without any of one them demonstrating that a Court has committed a factual and legal error in

its order. As required by rule 49(1), the statement of grounds must be constituted by factual and legal errors and not what may appear as vitriolic attack on a judicial officer. The regime does not avail an opportunity to re-argue a dismissed matter. The grounds must demonstrate that the appeal would have reasonable prospects of success or that some other compelling reason exist for the appeal to be heard. In the opinion of this Court, the appeal lacks prospects of success and fail to demonstrate compelling reasons. Additionally, this Court is of the opinion that the decision on the relief sought by the applicant would not have practical effect or results and leave to appeal cannot be given only for the appeal to be dismissed in terms of the provisions of section 16(2)(a)(i) of the Superior Courts Act. Held: (1) The application for leave to appeal is dismissed. Held: (2) The applicant must pay the costs of this application on a party and party scale to be settled or taxed at scale B.

JUDGMENT

MOSHOANA, J

Introduction

- [1] An application for leave to appeal regime serves as an important mechanism in the administration of justice. It is not purposed to afford an applicant a golden opportunity to be vitriolic to judicial officers. It also does not serve as a platform to re-argue a dismissed matter. That said, this is an application seeking to obtain leave to appeal against the whole judgment and order of this Court handed down on 26 June 2025, which order dismissed the applicant's application with costs. The application is opposed by the cited respondents. An attempt was made, which attempt was wisely jettisoned, to prevent the cited respondents to oppose the present application. Since the attempt was not pursued further, it is obsolete for this judgment to say anything further about the attempt, save to commend counsel for the applicant for the presence of mind to jettison it. Rule 49(1)(a) of the Uniform Rules requires the present application to be supported by statement of grounds. Those grounds must demonstrate an error of facts and law. The

present application prides itself of a massive 38 grounds of appeal. It is not the intention of this judgment to deal with each of the 38 grounds. It suffices to mention that the bulk of those grounds are not valid grounds contemplated in rule 49(1)(a). If anything, they are, with respect a vitriol against the judicial officer. Vitriolic stance remains unhelpful to an applicant for leave to appeal. If the requirements as legislated in section 17(1)(a) of the Superior Courts Act are not met, an application for leave to appeal falls to be dismissed.

Analysis

- [2] As indicated at the dawn of this judgment, the present application is predicated on a massive 38 grounds. The majority of the grounds are nothing but a refined re-argument of the dismissed application. One of the startling ground is that at the hearing of the application the applicant observed a reasonable apprehension of bias on the part of the judicial officer. This is considered to be startling in that having observed the actual bias, the applicant chose to remain silent and not seek an order to have the bias judicial officer recused. He waited for the outcome and only thereafter conjured up this ground. During oral submissions, counsel for the applicant in response to the question from the bench submitted that had the applicant succeeded, this allegation would not have seen the light of a day. As a matter of principle, judicial impartiality and neutrality does not mean that a judge must have no prior conceptions or sensibilities.¹ Generally, in motion proceedings, a judge before hearing a matter would have had an opportunity to study the relevant affidavits and heads of argument if furnished in preparation of hearing oral submissions. Such may rightfully propel a judge to hold a preliminary view on certain of the relevant legal principles. If that view is expressed at the hearing in order to enable the legal representatives to deal with, it cannot be that a judge is biased. It is trite that interlocutory rulings do not render a judicial officer to be biased and disqualified. Regarding a point of law, a judicial officer is entitled to raise it mero motu and afford the parties and opportunity to deal with it.

¹ See *Yukon Francophone School Board, Education Area # 23 v Yukon (Attorney General)* [2015] 2 SCR 282.

[3] As confirmed in *Bernert v ABSA Bank Ltd (Bernert)*², given the oath of office of a judicial officers a presumption of impartiality is implicit. In the present instance, the applicant kept his ace up his sleeve, as it were, and failed to challenge the alleged impartiality at the hearing of the application. The Constitutional Court had an occasion to deal with a similar situation in *Mbana v Shepstone & Wylie (Mbana)*³. Instructively, the Court with such perspicacity expressed itself in the following terms:

“[44] Had Ms Mbana apprehended bias in the Labour Court, as she asserts, she did, she would ordinarily have raised these allegations at the trial stage or in her initial application for leave to appeal. This Court in *Bernert* noted that a litigant who did not raise an allegation timeously does not display conduct consistent with reasonable apprehension of bias. **It is not in the interests of justice to permit a litigant who had full knowledge upon which the claim of actual bias is made to wait until an adverse judgment is pronounced before raising these allegations. To do so would undermine the administration of justice.**

[45] In *Bernert* we emphasised that “litigation must be brought to finality as speedily as possible”. That applies with equal force in this case. **It is not desirable for a litigant, after a trial has been completed and she has already sought leave to appeal on other grounds, to amend her grounds for leave to appeal by including new facts alleging actual bias.**

[46] For these reasons, we find that it is not in the interests of justice, **at this late stage, to permit Ms Mbana to raise a complaint of actual bias.**

[4] Equally instructive, the Court in *Bernert* expressed itself in the following terms:

“The conduct of the applicant is simply inconsistent with a reasonable apprehension of bias. If he had any apprehension, **it must have been of the kind that he thought could be cured by a judgment in his favour.** But that can hardly be said to be a reasonable apprehension of bias that is reasonably entertained. The applicant wanted to have the best of both worlds.”

² 2011 (3) SA 92 (CC).

³ [2015] ZACC 11.

- [5] Similarly, in the present application, the applicant wants to have the best of both worlds. He simply cannot do so. As he apparently observed the *body language*⁴ of the judge and developed an apprehension of bias, as he now seeks to contend, he should have asked the bias judge to recuse himself. It is worth mentioning that at the hearing of the application, the applicant was adeptly represented by two counsel, one of whom a senior counsel. Surely with such sufficient dexterity, the applicant ought to have acted swiftly to protect his constitutionally guaranteed rights protected in section 34 of the Constitution. His legal team must have been armoured with the requisite sagacity to have observed the blatant breach of his section 34 rights.
- [6] For all the above reasons, this Court is not of an opinion that the applicant is possessed with reasonable prospects of success on appeal based on this newly conjured up ground of reasonable apprehension of bias or actual bias.
- [7] The remainder of the grounds not specifically mentioned herein amount to nothing, but a refined re-argument of the legal principles already rejected in the impugned judgment. For those, having considered them against the reasons advanced in the impugned judgment, they all fail to meet the requirements of section 17(1)(a) of the Act. It suffices to mention that it is by now trite that an appeal lies against the order and not the reasons of the order. There is simply no merit in a submission that in order to precautionary suspend, there must be a strong suspicion of a misconduct having been committed. This Court is in full agreement with the sentiments recently expressed by the Labour Court in *Bombela Operating Company (Pty) Ltd v CCMA and Others (Bombela)*⁵. The Court said:

“[43] ... In short, *Long* established that a precautionary suspension is justified simply if the employer wishes to impose one while an investigation takes place. *Long* has curtailed the scope of challenging whether a precautionary suspension is reasonably necessary for a proper investigation to take place...”

⁴ It is unclear what this would mean for a Court of appeal should leave be granted.

⁵ (JR 589/2021) [2025] ZALCJHB 297 (11 July 2025).

- [8] Accordingly, in the opinion of this Court, the applicant failed to demonstrate that (a) the appeal would have reasonable prospects of success and (b) some compelling reason exists for the appeal to be heard.
- [9] During oral submissions, this Court raised with both counsel the question whether the appeal would have practical benefit at the time of its hearing should this Court grant leave. The applicant's counsel forcefully submitted that the appeal will not be moot. The respondents' counsel submitted otherwise. It is common cause that after 6 August 2025, the Fixed Term Contract of employment between the applicant and the Road Accident Fund would expire. Accepting that the rights which the applicant is seeking to protect and enforce are contractual in nature, once the contract expires, those rights would be unenforceable in law. Regard being had to the relief that the applicant sought, even if the appeal succeeds, those reliefs will not yield practical results to him. He cannot be returned to his position, in the circumstances where his employment contract had expired. Interdicting the alleged advertisement of the position in order to protect his alleged re-appointment by the disestablished board will not yield any practical results for him.
- [10] Section 16(2)(a)(i) of the Act is explicit. At the hearing of the appeal when the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone. It is inappropriate for a judge to give leave to appeal in an instance where it is perspicuous that a Court of appeal may dismiss the appeal on the basis that the decision sought will have no practical effect. Setting aside a precautionary suspension effected in terms of an expired contract of employment will not yield practical results. An argument that the applicant's name shall be cleared thereby is with respect lame. In the dismissed application, the applicant did not seek a relief to clear his name, instead he sought an order allowing him to resume his duties. This resumption of duties will not be possible in an instance where the employment contract has expired. Similarly, interdicting an advertisement in an instance where the employment contract has expired would not yield any practical results for the applicant.

[11] At the conclusion of the oral submissions, counsel for the applicant sought to be indulged by submitting authorities of the Constitutional Court dealing with the principle of mootness. This Court indulged him. The two uploaded authorities, one from the Constitutional Court and the other from the SCA do not alter the letter, spirit and purport of section 16(2)(a)(i) of the Act. Simply put, the decision sought will not yield practical results for the applicant.

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

Order

- 1. The application for leave to appeal is dismissed.**
- 2. The applicant is to pay the costs of this application on a scale of party and party to be settled or taxed at scale B.**



**GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For the Applicant:	Mr H Molotsi SC and Mr P Moshoadiba.
Instructed by:	Motalane Inc, Pretoria.
For the Respondents:	Mr ESJ Van Graan SC
Instructed by:	Renqe FY Inc, Pretoria
Date of Hearing	31 July 2025
Date of judgment:	01 August 2025