

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: **1973/2023**

In the matter between:

**GIBSON MOLALE
MBULELO BOSMAN
RIZWAAN ENGELBRECHT
SAMUEL MOLAWA
THAPELO REUBEN JANUARY**

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant

and

**FERDINAND DAVID BITTERBOSCH
NORTHERN CAPE CRICKET NPC
(Registration number: 2001/027403/08)
COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

First Respondent

Second Respondent

Third Respondent

In re:

FERDINAND DAVID BITTERBOSCH

Applicant

and

**NORTHERN CAPE CRICKET NPC
(Registration number: 2001/027403/08)
GIBSON MOLALE
MBULELO BOSMAN
RIZWAAN ENGELBRECHT
SAMUEL MOLAWA
THAPELO REUBEN JANUARY
COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent

Seventh Respondent

Heard: 29 July 2025
Delivered: 15 August 2025
Summary: Application for leave to appeal. Directors declared delinquent –
Section 162(5)(a) of the Companies Act 71 of 2008.

ORDER

In the result, the following order is made:

1. The application for leave to appeal is refused.
 2. The applicants are ordered to pay the costs of the first respondent jointly and severally, on the scale as between attorney and client, the one paying the other to be absolved.
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JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO J

- [1] The applicants seek leave to appeal to the Full Court of the Northern Cape Division against the order and judgment I delivered on 21 February 2025 in which I declared them delinquent directors as contemplated in s 162(5)(a) of the Companies Act 71 of 2008. The applicants contend that the appeal would have a reasonable prospect of success.
- [2] The test whether to grant leave to appeal is trite. Leave should only be granted in terms of s 17(1)(a)(i) and/or s 17(1)(a)(ii)¹ if the applicant has

¹ 10 of 2013 Superior Courts Act

satisfied the court that the appeal would have a reasonable prospect of success or that there is some compelling reason why the appeal should be heard². Leave to appeal may also be granted if it will be in the interests of justice to do so.

[3] It was submitted on behalf of the applicants that I erred in not following the trite principles of evidence and authorities when I granted judgment in the first respondent's favour despite the first respondent having not pleaded in particularity. The applicants claim that the first respondent relied on a statutory provision and failed to plead the necessary factual basis. The first respondent has, in my view, described the nature of his application in the founding papers and the relief sought in terms of s 162(5) (a) and (c) of the Companies Act, 71 of 2008. He has further listed, in his founding affidavit, the additional sections of the Act as well as the clauses in the Memorandum of Incorporation on which he relied while explaining the role and involvement of each individual director and the Chief Executive Officer (CEO) which necessitated judicial intervention.

[4] It was argued on behalf of the applicants that this Court considered other aspects like the resolutions of the meeting of 25 March 2023 and financial mismanagement, among others, when they were not issues raised by the first respondent in argument. The Supreme Court of Appeal (SCA) made

17 Leave to appeal

- (1) Leave to appeal may only be given where the judge or judges 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.

² Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA); Mont Chevaux Trust v Goosen 2014 JDR 2325 (LCC); Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021).

these instructive remarks in *Thompson v South African Broadcasting Corporation*³:

‘The Court is entitled to base its judgment and to make findings in relation to any matter flowing fairly from the record, the judgment, the heads of argument or the oral argument itself. If the parties have to be forewarned of each and every finding, the Court will not be able to function.’

- [5] The SCA enunciated in *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others*⁴

‘In motion proceedings, **the affidavits constitute both the pleadings and the evidence**: *Transnet Ltd v Rubenstein*, and the issues and averments in support of the parties' cases should appear clearly therefrom.’

No new issues were raised by the Court. The issues dealt with as appearing in the judgment emanate from the papers, pleadings and affidavits. See *Fischer and Another v Ramahlele and Others*⁵.

- [6] I have carefully considered the Notice of Application for Leave to Appeal, the principles and authorities relied upon, and the grounds of appeal listed therein where the applicants contend that the appeal would have reasonable prospects of success. Having heard the parties and having regard to the papers filed, I am not convinced that the applicants have shown any proper grounds that have prospects of success on appeal. It follows that the application for leave to appeal should fail.

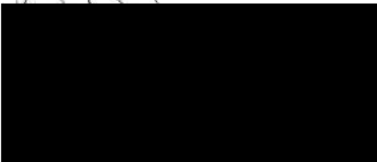
- [7] In the result, the following order is made:

³ 2001 (3) SA 746 (SCA); [2001] 1 All SA 329 (SCA) para 7

⁴ 2008 (2) SA 184 (SCA) para 43D – E

⁵ 2014 (4) SA 614 (SCA) paras 13 and 14.

1. The application for leave to appeal is refused.
2. The applicants are ordered to pay the costs of the first respondent jointly and severally, on the scale as between attorney and client, the one paying the other to be absolved.



M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the Applicants:
Instructed by:

Adv. S. Tsangarakis
Kenneth Juries & Associates

For the First Respondent:
Instructed by:

Adv. J.P. van Den Berg
Duncan & Rothman Inc