

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A2025-081938

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12/1/25	[Redacted Signature]
DATE	SIGNATURE

In the matter between:

VINCENT GEORGE SMITH

Applicant

And

TREVOR HILLS (CURATOR BONIS)

First Respondent

THE NATIONAL DIRECTOR OF PUBLIC

PROSECUTIONS

Second Respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

MUDAU, ADJP:

[1] I made an order dismissing the application for leave to appeal with costs, with reasons to follow. This is pursuant to a dismissed application for the release of

appealed against. What the test of reasonable prospects of success suggests is a detached decision, based on the facts and the law, that a court of appeal could reasonably conclude differently from that of the trial court. (see *Smith v S* 2012 (1) SACR 567 (SCA) at para 7, in which it stated:

"In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal, or that the case cannot be categorised as hopeless".

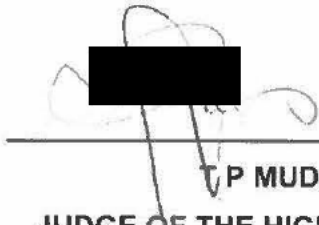
- [6] This court highlighted in the main judgment, which is repeated for convenience, that the Curator pointed out significantly, that: *"[T]he applicant's income and expenses as disclosed by him have increased exponentially between the period May 2023 to March 2025. The applicant has failed, however, to provide a declaration of the increase in his income and/or expenses or supporting documents in support of this increase"*. This allegation was not challenged as there was no reply to the affidavit.
- [7] Counsel for the applicant submitted that failure to file a replying affidavit was merely a mistake.
- [8] It was submitted on behalf of the applicant that this Court erred in reading into the clear provisions of Section 26 (6) of POCA that the applicant must make a full declaration of his assets and liabilities. The applicant contends on the authority of the minority judgment in *National Director of Public Prosecutions v Elran* 2013 (1) SACR 429 (CC) para 55 that, section 26(6) contains two requirements only and provides that the high court may order provision of legal expenses – *'...if the court is satisfied that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order and that the person cannot meet the expenses concerned out of his or her unrestrained property.'*
- [9] But as Rogers J stated in *Van Heerden and Another v National Director of Public Prosecutions and Another* (16910/11) [2015] ZAWCHC 96 (22 June 2015) at para 50, "The court's discretion in terms of s 26(6) can only be exercised if it is

satisfied (i) that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order; and (ii) that the person cannot meet the expenses concerned out of his or her unrestrained property. These jurisdictional facts differ in formulation from those laid down in s 44(2) of POCA. In particular, s 26(6) does not state that the person must have submitted a sworn and full statement of all his or her assets and liabilities; what he must fully disclosed under oath are all his or her interests in property subject to a restraint order. However, and because the court must also be satisfied that the person cannot meet the expenses in question from unrestrained property, a full disclosure of unrestrained property is necessarily required. Furthermore, a court is unlikely to be able properly to exercise its discretion under s 26(6) unless it also has full information concerning the person's liabilities".

[10] The application for leave to appeal is wholly unmerited.

Order

The order dismissing the application for leave to appeal with costs stands.



T P MUDAU ADJP
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

Counsel for the Applicants:	Adv. Cronje Kriel
Instructed by:	BDK Inc.

Counsel for the 1 st Respondent:	No appearance
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Instructed by:

Counsel for the 2nd Respondent: Ms Suna De Villiers

Instructed by: NDPP

Date of Hearing: 29 July 2025

Date of Judgment: