



**THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case 49/2011B

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 29 July 2025

**Heard on 25 July 2025
Delivered on 29 July 2025**

In the matter between:

**MNISI ELVIS
MNISI PHILEMON**

First Applicant
Second Applicant

and

REGISTRAR OF DEEDS: PRETORIA

First Respondent

**REGISTRAR OF DEEDS:
MPUMALANGA**

Second Respondent

**MINISTER OF THE DEPARTMENT OF
LAND REFORM AND RURAL
DEVELOPMENT**

Third Respondent

**MEMBER OF EXECUTIVE
COMMITTEE OF THE DEPARTMENT
OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

Fourth Respondent

**DIRECTOR-GENERAL:
DEPARTMENT OF LAND REFORM
AND RURAL DEVELOPMENT**

Fifth Respondent

**DIRECTOR-GENERAL:
DEPARTMENT OF LAND REFORM
AND RURAL DEVELOPMENT:
MPUMALANGA**

Sixth Respondent

**THE REGIONAL LAND CLAIMS
COMMISSIONER ERMELO
MPUMALANGA**

Seventh Respondent

NEAL FRASER SYMON N.O.

Eight Respondent

**ANDREW MGCINN PROPERTIES
(PTY) LTD**

Ninth Respondent

KOMATI GORGE LODGE (PTY) LTD

Tenth Respondent

**KOMATI GORGE LODGE FLY
FISHING**

Eleventh Respondent

NKAMBULE KUYITI JOSEPH

Twelfth Respondent

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] The Twelfth Respondent in the main application seeks to appeal the judgment and order of this court of 17 June 2025.¹ The Fourth and Sixth Respondents (the state parties) also seek leave to appeal against the order.

[2] The order stated:

1. The Department of Land Reform and Rural Development, including the Director-General of the Department, is directed to finalise the applicants' labour tenant claim, including conducting any required Land Rights Enquiry, within 30 court days from the date of this order.
2. The First and/or Second Respondent is directed to register a caveat over Portion 5 of Komatidraai 417 JT, restricting transfer, alienation or

¹

encumbrance thereof, pending the finalisation of the applicants' labour tenant claim.

3. The Twelfth Respondent is directed to permit the applicants to access Portion 5 of Komatidraai 417 JT for the purpose of grazing, limited to twenty-seven (27) head of cattle, on the portion referred to in the unsigned 2023 grazing arrangement, pending the finalisation of their claim as set out in paragraph 1.
4. There is no order as to costs.

[3] From the wording, it is evident that it is an interim order, intended to create a "holding space" for thirty days to enable the Department to finalise the labour tenant claim of the Mnisi family. The thirty days were based on submissions made by counsel during the hearing; that thirty days is what the Department requires to finalise the claim. That the order was meant to be an interim order is clear from the judgment. For instance, in paragraph 26, I stated "[t]he result of the disparity in the awarding of the land and the consequences thereof requires a temporary solution that is in the interest of justice" (own emphasis). Likewise, paragraph 28 makes it clear that

"The caveat sought by the applicants is not intended to strip Mr Nkambule of his land rights or occupation. The relief sought is modest, limited in duration, and aimed at maintaining fairness pending the State's fulfilment of its obligations. It does not affect Mr Nkambule's title but seeks to preserve the integrity of the broader process in which both claims should have been considered."

[4] The order was also not a final determination of rights. At most, what was protected was the applicants' right to fair consideration of their claims, while imposing a temporary burden on the Twelfth Respondent's land rights. It was not, and could not, be a final determination of the rights, as that was not the issue before the court.

[5] Which brings me to the appealability of the order: not every order is appealable. As explained in *Zweni v Minister of Law and Order*,² an order must:

² 1993 (1) SA 523 (A).

- a) Be final in effect and not susceptible to alteration;
- b) Be definitive of the rights of the parties;
- c) Have the effect of disposing of a substantial portion of the relief sought.

[6] On this basis, the leave to appeal stands to be dismissed. The order under appeal is interim: it is explicitly framed as temporary, subject to the finalisation of the applicants' claim (in 30 days), and aimed solely at preserving the integrity of a statutory process pending final adjudication. It does not finally determine any rights in land nor grant ownership or exclusive use. As such, it lacks the finality, definitiveness

[7] The Zweni-test has evolved to state that if the interest of justice demands appellate intervention, even an interim order may be appealable. In *United Democratic Movement v Lebashe Investment Group (Pty) Ltd*³ the Constitutional Court stated that

[45] What is to be considered and is decisive in deciding whether a judgment is appealable, even if the Zweni requirements are not fully met, is the interests of justice of a particular case and whether or not an order lacking one or more of the factors set out in Zweni constitutes a "decision" for the purposes of section 16(1)(a) of the Superior Courts Act. Over and above the common law test, it is well established that an interim order may be appealed against if the interests of justice so dictate.

[8] The applicant for leave to appeal has not shown any exceptional circumstances, nor could I find any. No exceptional prejudice or procedural injustice justifies deviation from the general rule that interim interdicts are not appealable. While the order places a modest limitation on use, it allows grazing access for 27 head of cattle and includes a temporary caveat. The order was intended to establish a holding position, pending the finalisation of the Department's work. Moreover, the 30 days have now passed, making the issues moot. I am aware of the dicta in *Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Limited*⁴ that stated

³ [2022] ZACC 34.

⁴ [2020] ZACC 5.

[48] [...] that “mootness is not an absolute bar to the justiciability of an issue [and that this] Court may entertain an appeal, even if moot, where the interests of justice so require”. This Court “has discretionary power to entertain even admittedly moot issues”.

[49] Where there are two conflicting judgments by different courts, especially where an appeal court’s outcome has binding implications for future matters, it weighs in favour of entertaining a moot matter.

[50] Moreover, this Court has proffered further factors that ought to be considered when determining whether it is in the interests of justice to hear a moot matter. These include:

- (a) whether any order which it may make will have some practical effect either on the parties or on others;
- (b) the nature and extent of the practical effect that any possible order might have;
- (c) the importance of the issue;
- (d) the complexity of the issue;
- (e) the fullness or otherwise of the arguments advanced; and
- (f) resolving the disputes between different courts.

[9] This is not a case of conflicting judgments, and none of the six factors are present in this case.

[10] In the absence of exceptional circumstances or any compelling interests of justice, and given that the relief granted was of a purely interim nature, now overtaken by time, there is no basis to entertain this appeal. The matter is moot, and no broader principle or jurisprudential uncertainty justifies departing from the general prohibition on appeals against interim interdicts. The application for leave to appeal is accordingly dismissed.

[11] As far as the fourth and sixth respondents are concerned, the situation has indeed evolved. The fourth and sixth respondents appear, in effect, to seek a variation of the original order by way of an appeal. However, the scope of an appeal is confined to challenging the correctness of the order as granted on the record then before the

Court. The introduction of new evidence, particularly to revisit an undertaking made during argument, falls outside the permissible bounds of appellate procedure. If the State is unable to comply with the terms of the order as it currently stands, procedural mechanisms other than an appeal are available to it.

[12] The applications for leave to appeal accordingly fall to be dismissed on the basis that the order was not final, and thus not appealable, and that it is not in the interest of justice to grant leave to appeal.

Order

[13] Therefore, the following order is made:

1. The applications for leave to appeal are dismissed.
2. There is no order as to costs.


WJ du Plessis

Judge of the High Court Gauteng Division,
Johannesburg

Date of hearing:	25 July 2025
Date of judgment:	28 July 2025
For the applicant:	PG Masango (attorney, acting pro bono).
For the 4 th and 6 th respondent:	N Mkhari instructed by the State Attorney, Mpumalanga
For the 12 th respondent:	MC Nkosi, instructed by Legal Aid South Africa, Ermelo legal office