

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

CASE NO: 2022/026798

DOH: 07 August 2025

DECIDED: 19 August 2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES:
(3)	NO
	REVISED
	<u>19 AUGUST 2025</u>
SIGNATURE	DATE

In the matter between:

WOODS WAREHOUSING (PTY) LTD

Applicant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
AFRICAN REVENUE SERVICES**

First Respondent

S PILLAY

Second Respondent

H NAICKER

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Third Respondent

P RAMBURATH

Fourth Respondent

A PILLAY

Fifth Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploaded on Caselines. Its date of hand down shall be deemed to be 19 August 2025.

ORDER

1. The application for leave to appeal is dismissed.
2. The applicant must pay the respondent's costs, including the costs of two counsel, on scale C for Adv van der Merwe and scale B in respect of Adv Mothibe.

JUDGMENT

Bam J

Introduction

1. The applicant, Woods Warehouse, seeks leave to appeal the whole of the judgment and order of this court, which was delivered on 14 February 2025, to the Supreme Court of Appeal, alternatively, to the Full Court (erroneously referred to as Full Bench) of this division. The applicant contends that it has reasonable grounds of success and that there are compelling reasons why the appeal should be heard. The application is opposed by the Commissioner on the basis that the applicant has not met the test set

out in section 17 (1) (a) (i) and there are no compelling reasons which justify that the appeal be heard as stipulated in subsection (1) (a) (ii). The Commissioner contends that the application should be dismissed with costs. For ease of reading, I refer to the parties as they were in the original proceedings. Thus, the applicant refers to Woods Warehouse while the respondent refers to the first to the fifth respondents, collectively referred to as the Commissioner.

Applicable legal principles

2. The relevant provisions for present purposes are to be found in Section 17 (a) (i) and (ii) of the Superior Court Act¹. The provision reads:

Section 17 (1)

‘(a) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (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;’

3. In interpreting the provisions, this court is guided by the remarks of the court in *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*, where the court affirmed that:

‘[2] [An] applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes

¹ Act 10 of 2013.

an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.’²

4. An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect of success, *MEC for Health, Eastern Cape v Mkhitha and Another*³. It added, there must a sound rational basis to conclude that there is a reasonable prospect of success on appeal.

An appeal lies against the order, not the reasons

5. It is a foundational procedural principle that an appeal lies against a substantive order of a court rather than against the reasons for its judgment, *Zurich Insurance Company South Africa Ltd v Gauteng Provincial Government*⁴. Even where an applicant in an application for leave to appeal succeeds in convincing the court that it erred in fact or in law, it must show that the substantive order or judgment would have been different if the court applied the correct law or facts, *Celliers and Others v Kleinfontein Aandeleblok (Edms) Bpk and Others*⁵.

Grounds of appeal to be clearly and succinctly set out

6. Rule 49 (1) (b) provides:

² (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020), paragraph 2.

³ (1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 16.

⁴ (734/2021) [2022] ZASCA 127; [2023] 1 All SA 368 (SCA); 2023 (1) SA 447 (SCA) (28 September 2022), paragraph 4; *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole* (200/11) [2013] ZASCA 16; [2013] 2 All SA 629 (SCA); 2013 (5) SA 183 (SCA) (20 March 2013); *Neotel (Pty) Ltd v Telkom SOC & Others* (605/2016) [2017] ZASCA 47 (31 March 2017), paragraph 23.

⁵ (Leave to Appeal) (4755/2022) [2024] ZAGPPHC 1060 (31 October 2024), paragraph 15.

'When leave to appeal is required..., application for such leave shall be made and the **grounds therefor shall be furnished...**' (own underline)

7. That the grounds of appeal must be clearly and succinctly set in an application for leave to appeal is established law. This is to enable the court and the respondent to be fully informed of the case the applicant seeks to make out, and which the respondent is to meet in opposing the application. Lengthy and convoluted grounds of appeal should not be countenanced, *Songono v Minister of Law and Order* 1996 (4) SA 384, ECD at 385.

Appellants' grounds

8. The appellant appears to have breached the rule set out in *Songono*. This is not only prejudicial to the respondent but to the court, in consideration of its time and the administration of justice. There are no grounds identified in the applicant's notice to appeal. On this basis alone, the application should be rejected. Now the court must painstakingly go through the applicant's papers and try to identify what makes its grounds of appeal. I now do so, in as best a manner as possible.

1.1 The court ought to have found that the applicant, if unsuccessful in obtaining the relief in prayer 2 of the Notice of Motion, is only indebted to the first respondent in the amount of R 2 554 919.10 (in the event the Fourth claim is not time barred), which the applicant still persists with

9. The appellant submits that the court erred in accepting that the respondent is entitled to the amount demanded which represents the value of the missing goods for duty purposes, unpaid duties, including the forfeiture value provided for in section 88(2) (a), all of which amount to R 7 113 015.00. The applicant submits that Sections 19(7) and 19(8) are discernible from Section 18(4) in that the forfeiture penalties are not provided for. The court thus completely disregarded the relief sought in the alternative prayer 3 of the Notice of Motion as it is not dealt with at all in the judgment. The court accordingly ought to have found that the applicant, if unsuccessful in obtaining the relief in prayer 2 of the Notice of Motion, which aimed to set aside the decision to demand R 7 113 015.00, is only indebted to the first respondent in the amount of R 2 554 919.10 (in the event the Fourth claim is not time barred), which the applicant still persists with. This is exacerbated by the fact that the applicant had not been found to have committed any offence under the Act as contemplated in terms of Sections 87 and 88.
10. It is difficult to discern the legal basis for these submissions, especially where the applicant itself shies away from identifying the case it had made in its papers for the relevance of sections 19(7) and 19(8) of the Act. Respectfully, the applicant is not entitled to relief simply because it has asked for that relief in its NOM, without making a case. The applicant cannot cherry-pick sections of the Act without a case. The judgment issued by this court carefully weighed the case made by the Commissioner and the applicability or otherwise of the various sections, including Section 18(4). In addition, the judgment dealt with the applicant's conduct and specifically applied the relevant sections of the Act, including Sections 87 and 88. There is no need to repeat

what is set out in the judgment. There is no merit to this ground and no prospect that another court would come to a different finding.

1.2 The court erred in finding that the applicant had intentionally and without authorisation, released the goods to an unauthorised person; 1.3 The goods were not released to the haulier on the same day

11. The applicant submits that it had received an amended electronic road manifest, (ERM) at the time, which described the truck registration number and the nominated remover as it appeared in the Bills of Entry, BoEs, as accepted by SARS. The applicant further submits that the 'amended ERM was not informally amended' and the court failed to recognise that the amendment of an ERM does not require a voucher of correction, VOC. It is difficult to find the logic behind these submissions and what they seek to achieve. The case made by the Commissioner is that the applicant released the goods to an unauthorised person. That case is fully addressed in the judgment, which the applicant failed to assail. These submissions, including the submission about the date of release of the goods, indicate that the applicant simply refuses to interact and engage with the substance of the judgment. There is no merit to this submission and no prospect that another court would come to a different finding.

1.4 The court erred in finding that the applicant is a seasoned licensee of a warehouse;

1.5 The court erred in finding that a VOC is required for the amendment of an ERM. 1.6

The court erred in finding that the applicant was duty bound to ensure that there is no fraud perpetrated on the EDI system

12. I find it difficult to appreciate the purpose of these submissions. Not only do they fail to advance the applicant's application for leave to appeal, they are also incorrect, in particular grounds 1.5 and 1.6. I refer to the judgment of this court. There is no merit to any of these submissions and no prospect that another court would come to a different finding.

1.7 The court erred in finding that the Commissioner is absolved from ensuring compliance with the Act, as it is self regulatory in nature; 1.8 The court failed to appreciate that the ERM was amended to accord with the BsOE

13. These submissions do not engage with the substance of the judgment. There is no merit to these submissions and no prospect that another court would come to a different finding.

1.9 The court erred in relying on Zacpak, Cape Town. Zacpak does not find application to the present case as the applicant released the goods in accordance with documents authorised by SARS; 1.10 The court erred when it found that SARS had invoked joint liability; The court failed to recognise that the licensee is called upon to pay only duty, if it could not prove that the goods were exported and not the duty, VAT, forfeiture and other amounts in terms of Section 88(2)

14. Zacpak, as the judgment spells out, finds application in the circumstances of this case.

Further, the judgment states clearly that SARS had invoked joint liability. The submissions regarding Sections 18, 18A and the applicant's liability to pay forfeiture is fully set out in the judgment. There is no merit to these submissions and no prospect that another court would come to a different finding.

1.11 The court ought to have found that the applicant released the goods upon being presented with documents issued by SARS; 1.12 The applicant should not be held liable; The court erred in placing reliance on NCP Alcoholics (Pty) Ltd v CSARS KZN; The court ought to have granted the applicant the relief it sought in paragraphs 1 and 2 of the Notice of Motion. At the very least, and in the alternative the court ought to have considered the relief sought in prayer 3, which it did not do

15. As to the first submission regarding what the court ought to have found with regard to the documents isolated by the applicant pertaining to the release of the goods, the applicant is unable to overcome the finding made in the judgment that it released the goods to an unauthorised person. That case remains in tact. As to the submission that the applicant should not have been found liable based on the defence of prescription, the judgment reasons this issue and applies the *NCP Alcoholics* case and concludes that the claim had not prescribed.

16. The applicant simply does not engage with the reasoning in the judgment. It merely points out that the investigation at the time pertained to a different person and, in a haphazard manner, submit that prescription would not have been interrupted. The

applicant shies away from clearly referencing the facts as they are in the judgment.

The conclusions reached in the judgment are not attacked in any meaningful way.

17. As to the submissions that the court ought to have granted the relief set out in prayers 1 and 2 of the NOM and in the alternative, prayer 3, there is simply no case made for any of these submissions. Early on in this judgment, I had made the point that the applicant had made no case whatsoever for the relief in prayer 3. For this reason, the applicant is unable to point out the case it had made to sustain the relief. Similarly, no case had been made for the relief in prayers 1 and 2 of the NOM and none has been pointed out. There is no merit to these submissions and no prospect that another court would come to a different finding.

Compelling reasons

- 1. Innocent parties are levied with exorbitant and excessive penalties for fraudulent schemes carried on by unknown third parties and absolves SARS from properly pursuing and investigating the actual perpetrators of criminal conduct;*
- 2. SARS attempts to sidestep its own obligations in terms of the Act;*
- 3. The matter concerns payment of vast sums of funds from the applicant in circumstances where it has not participated nor benefitted from the fraud committed.*

18. I fail to see how these points can be said to be compelling reasons to grant leave to appeal. The judgment reasons what the applicant ought to have done against what it did, in direct confrontation of the law. The judgment deals with the submission

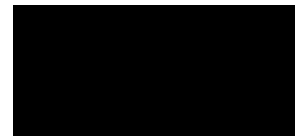
regarding the enforcement of the Act by SARS. These do not rise to the level of compelling circumstances to grant leave to appeal.

Conclusion

19. For all the reasons set out in this judgment leave to appeal must be refused.

Order

1. The application for leave to appeal is dismissed.
2. The applicant must pay the respondent's costs, including the costs of two counsel, on scale C for Adv van der Merwe and scale B in respect of Adv Mothibe.



N.N BAM
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Date of Hearing: 07 August 2025

Date of Judgment: 19 August 2025

Appearances:

Counsel for the Applicant: Adv G.Y Benson

Instructed by: Pahad Attorneys

Houghton, Johannesburg

Counsel for the Respondents:

Adv M.P van der Merwe SC & Adv W

Mothibe

Instructed by:

Maponya Inc.

Arcadia, Pretoria