



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 2025-055130

In the matter between:

KARABO MOKALE RAMELA

Applicant

and

SATHS COOPER (N.O)

First Respondent

JONTY TSHIPPA (N.O)

Second Respondent

THE ROBBEN ISLAND MUSEUM

Third Respondent

**THE MINISTER OF SPORTS, ARTS AND
CULTURE**

Fourth Respondent

Heard on: 08 August 2025

Delivered Electronically on: 28 August 2025

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LEKHULENI J:

Introduction

[1] This is an application for leave to appeal to the Supreme Court of Appeal (*'the SCA'*) alternatively, to the full bench of the Western Cape High Court in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013 (*'the Superior Courts Act'*), against the whole judgment and order of this Court (*'the main Judgment'*) handed down on 5 May 2025. In that judgment, this Court dismissed the applicant's application for the Court to interdict, in the interim, the first to the third respondents from committing any conduct that, in any manner, causes occupational detriment to the applicant. The Court also dismissed the applicant's application that the first and/or the fourth respondent be ordered to effect remedial action as enjoined by the Protected Disclosures Act 26 of 2000 (*'the PDA'*) as amended.

Grounds of Appeal

[2] In summary, the applicant's grounds of appeal discernible from the notice of appeal can be summarised as follows: The applicant asserts that the appeal has a reasonable prospect of success. The applicant contended that this Court erred in finding that the disclosure made by the applicant is not a protected disclosure as contemplated in the PDA. According to the applicant, the court should have found that the disclosure made by the applicant to the various authorities, as stipulated in the PDA, meets the requirements set out in the Act. The applicant asserted that the Court erred on the factual finding that the applicant made his disclosure *ex post facto* to the employer's decision to bring disciplinary proceedings against him, and secondly, (and by implication) that the applicant was not *bona fide* in making his disclosure but only did so to avoid disciplinary proceedings being brought against him.

[3] The applicant submitted that the Court ought to have found that the disclosure the applicant made on 18 December 2024, and subsequently to the fourth respondent, is sufficient to meet the test for such disclosure in terms of the PDA. The applicant also contended that the Court erred in failing to consider the prayers for an interdict as stated in the notice of motion, specifically omitting to address the question of whether the applicant had established a case for interim relief, *mandamus*, or declaratory relief.

The applicable legal principles

[4] The applicant's application for leave to appeal is based on section 17(1)(a) of the Superior Courts Act. Section 17 of the Superior Courts Act regulates applications for leave to appeal from a decision of a High Court. It provides as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned 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;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'

[5] The test, which had been applied previously in similar applications, was whether there were reasonable prospects that another court might come to a different conclusion. With the enactment of section 17 of the Superior Courts Act, the threshold for granting leave to appeal a judgment of the High Court has been significantly raised. There can be little doubt that the use of the word 'would' in section 17(1)(a)(i) of the Superior Courts Act implies that the test for leave to appeal is now more onerous. The intention is clearly to avoid our courts of appeal being flooded with frivolous appeals that are doomed to fail. (See *Valley of the Kings Thaba Motswere (Pty) Ltd and Another v Al Mayya International* (EL926/2016, 2226/2016) [2016] ZAECGHC 137 (10 November 2016) para 4). The use of the word 'would' in subsection 17(1)(a)(i) of the Act imposes a more stringent threshold compared to the provisions of the repealed Supreme Court Act 59 of 1959. (*S v Notshokovu* [2016] ZASCA 112 para 2).

[6] In *MEC for Health, Eastern Cape v Mkhita* 2016 JDR 2214 (SCA), the Supreme Court of Appeal emphasised the application for the test for leave to appeal and stated:

'[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of

success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.'

[7] From the foregoing, what is required of this Court is to consider, objectively and dispassionately, whether there are reasonable prospects that another court will find merit in the arguments advanced by the losing party. (*Valley of the Kings Thaba Motswere (Pty) Ltd and Another v Al Maya International* [2016] 137 (ZAECHGHC) 137 (10 November 2016) para 4). These principles emphasise that the requirement for a successful leave to appeal is more than a mere possibility that another judge might come to a different conclusion. The test is whether there is a reasonable prospect of success that another judge would come to a different conclusion.

Discussion

[8] The applicant's main ground of appeal is that there are reasonable prospects that another court would find that I erred in finding that the applicant did not make a disclosure envisaged in the PDA. I am not persuaded that there are any reasonable prospects that those assertions would or, for that matter, might be upheld by another court. As foreshadowed above, it is common cause that in the main application the applicant sought an order that this court interdict, in the interim, the first to the third respondent from committing any conduct that, in any manner, causes occupational detriment to the applicant and that the Court direct the first respondent and or the fourth respondent effect remedial actions as enjoined in the PDA.

[9] As discussed in the main judgment, the protection granted to an employee making a protected disclosure is outlined in Section 3 of the PDA. In terms of this

section, no employee may be subjected to any occupational detriment by his or her employer on account or partly on account of having made a protective disclosure. An occupational detriment is defined in section 1 as including being subjected to any disciplinary action.

[10] The broad purpose of the PDA is to encourage whistleblowers in the interests of accountable and transparent governance in both the public and the private sector. (*City of Tshwane Metropolitan Municipality v Engineering Council of South Africa and another* (532/08) [2009] ZASCA 151 (27 November 2009) para 42). It is, however, also clear from the provisions of the PDA that the protection afforded by the PDA is not unconditional and that certain requirements must be met before an employee may be entitled to the protection afforded by the PDA. (See *Randles v Chemical Specialities Ltd* [2011] JOL 26803 (LC) para 21).

[11] The protection afforded to an employee must therefore be understood in reference to the definition sections, which define what constitutes a protected disclosure. These sections should also be understood in the context of the PDA's overall purpose, which is to foster a culture of whistleblowing. Significantly, fostering a culture of disclosure is a constitutional imperative, as it is at the heart of the fundamental principles aimed at achieving a just society based on democratic values. (See *Potgieter v Tubatse Ferrochrome* (2014) 35 ILJ 2419 (LAC) para 14). To enjoy protection, the employee who made the disclosure must *bona fide* have believed that the information disclosed was true.

[12] As the main judgment found, the alleged disclosure made by the appellant was not *bona fide*. This is underscored by the fact that a notice was issued to the applicant on 12 February 2025, requesting an explanation for why he should not be suspended due to certain charges, including being absent from work without leave or permission. Two days later, after the applicant was served with the said notice, the applicant allegedly made a protected disclosure to the Minister of Sports, Arts and Culture. Evidently, the applicant made the alleged protected disclosure after he was given a notice contemplating his suspension and setting out the allegations of misconduct against him. Based on the presented facts, it is evident that the employer did not act

with malice or out of spite when it commenced disciplinary proceedings against the applicant.

[13] Mr Alcock, counsel for the applicant, submitted at the hearing of the main application and in this application that the fact that the information that the applicant disclosed was in the public domain and being investigated by the employer did not preclude the applicant from disclosing such information and from enjoying protection in terms of the PDA. I do not agree with this proposition. The PDA encourages internal procedures and remedies to be exhausted before the disclosure is made public. The purpose of this requirement is to allow the employer to investigate the matter.

[14] The employer should be given a chance to explain or correct the situation. The RIM Council was aware of the transgressions that the applicant disclosed and that he reported to the Minister. The RIM Council had commissioned various forensic investigations to address the alleged contraventions. The applicant is aware of these ongoing investigations. Forensic entities have been commissioned to investigate the alleged malfeasance reported by the applicant to the Minister. The applicant alluded to these investigations in his founding affidavit and stated that the reports from these entities are pending and imminent. As explained in the main judgment, the alleged disclosure made by the applicant was not a disclosure envisaged in the PDA. It was a stratagem, in my view, to circumvent the disciplinary process launched against the applicant.

[15] I have also observed that during the hearing of this present application (application for leave to appeal), counsel for the applicant seems to suggest that the protected disclosure was made on 18 December 2024. However, during the argument of the main application, reference was made to a report made to the police for threat analysis but the applicant tied his case on the alleged protected disclosure that was first made on 14 February 2025 when the applicant dispatched his alleged protected disclosure through email to the fourth respondent. The applicant did not state in his deposition of 18 December 2025 that he was making a protected disclosure. In that affidavit, the applicant indicated that he wanted to lay a factual and evidentiary basis upon which SAPS, or any other relevant authorities may utilise to undertake a security

and threat analysis on his person and that of his family if necessary. The whole affidavit does not refer to any protected disclosure whatsoever.

[16] In paragraph 63 of the answering affidavit, the respondents stated that the applicant had failed to identify precisely what the alleged protected disclosure was that he made to the fourth respondent on 14 February 2025. These assertions were not challenged. The applicant did not file a replying affidavit to indicate that, for all intents and purposes, the protected disclosure he made was on 18 December 2024, when he reported the matter and made a statement for threat analysis. The applicant did not state that the disclosure allegedly made to the Minister on 14 February 2025, was augmenting the disclosure he had already made on 18 December 2024 to the police.

[17] Importantly, in his heads of argument for the main application, Mr Alcock stated at paragraph 11 thereof, that on 04 February 2025, the applicant consulted in preparation for a disclosure and that the respondents had pleaded no knowledge of this consultation. In other words, the applicant was consulting on 4 February 2025 to make a disclosure. In his heads of argument, counsel never argued that the applicant made a disclosure on 18 December 2025. To my mind, the applicant seeks to shift the goal post pursuant to the ruling of this Court. From the reading of the applicant's founding affidavit and his deposition of 18 December 2024, it is evident that the applicant made the alleged protected disclosure after he was given a notice contemplating his suspension and setting out the allegations of misconduct against him.

[18] In the circumstances, it cannot be said that the employer acted out of vengeance when it instituted disciplinary proceedings against the applicant. The protected disclosure that the applicant allegedly made as a manoeuvre to thwart a disciplinary action does not give rise to an occupational detriment. The disciplinary action instituted against the applicant is not a retaliatory action by the RIM Council (the employer) against the applicant. The employer did not act in retaliation when it instituted the proceedings against the applicant. In my view, there are no reasonable prospects of success that another court would come to a different conclusion.

[19] As stated in the main judgment, from the objective facts, the alleged disclosure to the fourth respondent was made as a stratagem to side-step the disciplinary proceedings that the employer instituted against the applicant. As I see it, the disclosure was not made in good faith. While the PDA should be interpreted generously to vindicate its purpose, courts should not condone an employee's attempt to invoke the Act's protection to avoid the consequences of shortcomings in their own conduct. (*National Institute for the Humanities and Social Sciences v Lephoto* [2020] 3 BLLR 257 (LAC) para 37).

[20] Finally, the applicant argues that this Court erred in its ruling because it did not consider whether a case had been made out for interim interdict and declaratory relief. This argument with respect is erroneous and fundamentally misses the point. The applicant had to establish first a protected disclosure as envisaged in the Act. Once that has been established, it was instructive of the Court to consider granting a remedy in terms of section 4 of the PDA or an interdict or the declaratory relief that the applicant sought. The applicant failed to establish a protected disclosure as envisaged in the Act; as such, it was not necessary to consider the requirements of an interdict. In any event, the applicant did not address the requirements of an interdict in his founding affidavit or supplementary affidavit. The argument raised in the heads of argument was not at all in sync with the substance of the affidavit in this regard.

[21] In the circumstances, an application for leave to appeal to the SCA or the full court of this division will be a waste of judicial resources. I am not persuaded at all that there are any reasonable prospects that the applicant's assertions would (or, for that matter, might) be upheld by another court. On a conspectus of all the facts placed before this Court, there are no prospects of success in granting leave to appeal.

Order

[22] In the result, the following order is granted:

22.1 The applicant's application for leave to appeal is hereby dismissed.

22.2 The applicant is ordered to pay the costs of this application on a party and party scale, including the costs of counsel on scale B.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Adv Alcock

Instructed by: Phungula Sibusiso Attorneys

For the First, Second and Third Respondents: Adv Mndebele

Instructed by: Molatudi Attorneys