



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) **REPORTABLE:**
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED: [Redacted]
(4) Signature: [Redacted] Date: 02/09/25

CASE NO.: 2023/024992

In the matter between:

CHRISTIAAN FREDERICK SMIT

Applicant

and

JOHAN FRANCOIS ENGELERECHT N.O.

First Respondent

GONOSAGREE GOVENDER N.O.

Second Respondent

LENGAU GROUP (PTY) LTD (IN PROVISIONAL LIQUIDATION)

Third Respondent

JUDGMENT

Kumalo J

INTRODUCTION

[1]. The Respondents in this matter seek leave to appeal the whole of the judgment of this Court handed down on 29 April 2025, which granted an order interdicting the Respondents from disposing of the proceeds derived from the agreement concluded between the Third Respondent and Masemanzi Mining Holdings (Pty) Ltd ("Masemazi"), pending the finalisation of the Applicant's action.

[2]. The order of the read as follows:-

"1. The First and Second Respondents are interdicted and prohibited from disposing and or alienating or in any other manner from utilising the proceeds derived from an agreement concluded between the respondents and Masemanzini Mining Holdings (Pty) Ltd pending the institution and finalisation of an action for the payment of the aforesaid proceeds;

2. The Applicant shall institute the said action within a period of 30 days from the date of this order, failing which, the first order shall lapse."

[3]. It is clear from the above wording that the orders sought by the Applicant and granted were interim in nature. The Respondents seek to appeal such orders, which are interim in nature. The general rule is that the grant of an interdict pending the institution and finalisation of an action is interlocutory and therefore not appealable.¹

¹ See UDC Bank Limited v Seacat Leasing and Finance Co. (Pty) Ltd and Another 1979 (4) SA682 (T) at 690C

- [4]. The order of this court is therefore not final in effect in that it is granted pending the outcome of the action to be instituted.
- [5]. In *Zweni v Minister of Law and Order*², the Appellate Division held that, in determining whether an interlocutory order is appealable, the inquiry is whether the decision against which it is sought to appeal constitutes a judgment or order within the meaning of the provisions of section 20(1) of the Supreme Court Act 59 of 1959, failing which it would not be appealable.
- [6]. For a judgment to be appealable, it must be final in effect and not susceptible of alteration by the court of first instance. It must not be definitive of the rights of the parties, and it must have the effect of disposing of a substantial portion of the relief claimed in the main action.
- [7]. In this case, the order is clearly not final. Furthermore, it does not definitively establish any of the parties' rights. Those rights will be defined in the primary matter to be brought by the Applicant. The order is mainly to safeguard the proceeds derived from the agreement concluded between the Respondents and Masemanzi.

² 1993 (1) SA 523 (A)

- [8]. Further, the order of this court does not have the effect of disposing of any substantial portion of the relief claimed in the main proceedings. I agree with the Applicant's submissions that no finding in the judgment of this court against which leave to appeal is sought disposes of any substantial portion of the relief claimed in the main proceedings.
- [9]. The relief claimed in the main proceedings is directed, amongst others, to the payment of an amount to which the Applicant lays claim. It is not this court's judgment that the Applicant is entitled to the same. The court would consider that seized with that dispute.
- [10]. The Respondents sought to rely on *National Treasury and Others v Opposition to Urban Tolling Alliance* 2012(6) SA 223 (CC), amongst others for the proposition of the appealability of an interim order. The Constitutional Court considered the appealability of an interim order. It held that courts are rightly reluctant to hear appeals against interim orders that have no final effect. That, in any event, are susceptible to reconsideration by a court when the final relief is determined. That, however, is not an inflexible rule. In each case, what best serves the interests of justice dictates whether an appeal against an interim order should be entertained.
- [11]. That aligns well with developments in case law regarding when an appeal against an interim order may be permitted. The court has granted leave to appeal in relation to interim orders before. It has made it clear that the operative standard

is 'the interests of justice'. To that end, it must consider and weigh all relevant circumstances carefully. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is an appropriate and vital consideration. Yet, it is not the only or always decisive consideration.

[12]. Accordingly, the paramount test for the appealability of a particular interim interdict is whether it would be in the interests of justice for that interim interdict to be appealed, considering the facts of its specific case.

[13]. This court is not convinced that it would be in the interest of justice to grant leave to appeal in this matter. The complaint that the liquidators are prohibited from using funds for any administration costs and, as such, cannot continue with any litigation is inaccurate. The liquidators can use any other funds they may have and are only prohibited from using the funds that are the subject matter of the agreement between the Third Respondent and Masemanzi.

[14]. This Court is of the firm view that its order is interim and not appealable. The interest of justice does not favour the Respondents in this regard.

[15]. In the circumstances, the following order is made:

1. The Respondents' application for leave to appeal is refused; and

2. The Respondents are ordered to pay the costs of this application on a party and party scale "C".

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MP Kumalo
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv PM van Ryneveld SC

Instructed by: Strauss Attorneys Inc.

For the first & second respondent: Adv SJ van Rensburg SC

Instructed by: Walberg Attorneys Inc.