THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2025 – 072515

In the matter between:

TWK AGRI (PTY) LTD Applicant

and

DE LANGE, COERT FREDERICK First Respondent

INTERSURE FINANCIAL SERVICES (PTY) LTD Second Respondent

Heard: In Chambers

Delivered: 5 September 2025

Summary: Application for leave to appeal dismissed, no costs.

JUDGMENT

DANIELS J

Introduction

[1] The first respondent seeks leave to appeal against the judgment of this court, handed down on 30 June 2025. For ease of reference, the parties are referred to in the same manner as the application itself.

Test on leave to appeal

[2] Section 17(1) of the Superior Courts Act No. 10 of 2013 provides that leave to appeal may only be given where the court a quo is of the opinion that the appeal *would* have a reasonable prospect of success or there is some other compelling reason the appeal should be heard. Leave to appeal should not be granted unless there is a sound and rational basis to conclude that there is a reasonable prospect of success.[1]

Analysis of the grounds for leave to appeal

[3] The first respondent contends that this court erred by finding that the application was urgent. It contends that the applicant failed to make out its case on urgency in its founding affidavit. The grounds for urgency were pertinently addressed in para 12 of the founding affidavit. It is clear, from the judgment, that this court considered the submissions of both the parties, and exercised its discretion judicially. In any event, a ruling on urgency is not final and definitive of the rights of the parties and is therefore not subject to appeal.[2]

[4] The first respondent contends that this court erred by failing to consider that the applicant had not complied with rule 39(3)(c), 39(10), and 39(11) which allegedly contain mandatory provisions. I disagree. The rules should not be interpreted, or applied, in such a strict and formal manner so as to deprive the Judge of the discretionary power to manage the court proceedings in a fair and just manner. In any event, as the court held in *Federated Trust Ltd v Botha*[3] "*The court does not encourage formalism in the application of the Rules. The rules are not an end in*

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[1] *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] JOL 36940 (SCA) at paras 16 – 17

[2] *Ball v Bambalela Bolts (Pty) Ltd & another* (2013) 34 ILJ 2821 (LAC) at para 32

[3] 1978 (3) SA 645 (A) at 654

themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts." The rules must be interpreted in a purposive manner, not in a manner that is mechanical or literalist.[4] Furthermore, as is oft said the rules are there for the Court, not the Court for the rules.[5]

[5] The first respondent contends that the court erred by having regard to the applicant's amended notice of motion and its supplementary founding affidavit because the applicant failed to give notice in terms of rule 20(1) and failed to file an application in terms of rule 20(9). It is clear from its design that rule 20 is applicable to trials. In my view, the authorities do not restrict the discretion of the court in the manner contended. In para 4 of its judgment, the court applied the test set out in *Transvaal Racing Club v Jockey Club of South Africa*[6]. It is apparent that the court had regard to the reason why the additional affidavit was necessary, prejudice, and the public policy consideration that the parties should be permitted to place their full case before the court. I see no reason why the appeal court *would* come to a different conclusion.

[6] The first respondent contends that the court erred by finding that there was no dispute about the existence of 12 July 2022 restraint agreement and it failed to properly apply the Plascon-Evans rule. Once again, I must disagree. The court found that first respondent's denial that the restraint existed was a bald denial which failed to raise a real, genuine and bona fide dispute of fact. A genuine dispute of fact exists "*only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for*

[4] *Adams v National Bargaining Council for the Road Freight & Logistics Industry & others* (2020) 41 ILJ 2051 (LAC) at para 16

[5] *Anglo Operations Ltd v Sandhurst Estates (Pty) Ltd* 2007 (2) SA 363 (SCA) at para 32

[6] 1958 (3) SA 599 (W) at 604

disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied."[7] The court found that, for the reasons set out in its judgment, that the bald denial failed to raise a genuine or bona fide dispute of fact. In the circumstances, the court properly applied the Plascon-Evans rule.

[7] The first respondent contends that the court erred by finding that the applicant had a protectable interest, given that the relationship between the broker and the clients or customers is of such a personal nature that they cannot be said to constitute a protectable interest. This submission lacks merit[8] and I see no reason why the appeal court *would* find otherwise.

[8] The first respondent contends that the court erred by failing to consider that the TCF provisions of the Financial Sector Conduct Authority permits clients to switch brokers, and therefore the restraint ought not to be enforced. This argument also lacks merit. As the applicant indicates, the first respondent practiced under the FSP licence issued to the applicant.

[9] The first respondent contends that the court erred by finding that the restraint was reasonable, and that it failed to put up facts demonstrating that the restraint was unreasonable in respect of the matter, area, or duration of the restraint. First, it is clear from the authorities that the first respondent still bears an onus in that regard.[9] Second, the factors raised in para 15, to the extent that they are relevant,[10] were considered. This is evident from para 43 of the judgment.

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[7] *Wightman t/a JW Construction v Headfour (Pty) Ltd and another* 2008 (3) SA 371 (SCA) at para 13

[8] *Rawlins and another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 542

[9] *Beedle v SloJo Innovations Hub (Pty) Ltd* (2023) 44 ILJ 2493 (LAC) at paras 34 and 35

[10] In *Medtronic (Africa) (Pty) Ltd v Van Wyk & another* (2016) 37 ILJ 1165 (LC) at para 35 Van Niekerk J (as he then was) stated: "The predictable consequences of personal inconvenience and ramifications on family and career prospects are not factors that weigh against enforcement."

Conclusion

[10] An analysis of the grounds for leave to appeal do not reveal a sound and rational basis to conclude that there is a reasonable prospect of success on appeal. The application is therefore dismissed.

RN Daniels

Judge of the Labour Court of South Africa