

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-076989

(1)	REPORTABLE: YES ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES ☒ NO
(3)	REVIEWED: YES/NO
8 September 2025 DATE	
 SIGNATURE	

In the matter between:

NKALA: PAUL NEO

Applicant

And

RAPAPALI: MPHO MMAMOKETE

Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order.

1. Application for leave to appeal is dismissed with costs.

Introduction

- [2] The contempt of court application by the applicant for non-compliance with a court order that was granted on 8 August 2024 was dismissed on 11 June 2025.
- [3] The applicant requested reasons for the dismissal, which reasons were provided on 13 June 2025. Not satisfied with the reasons the applicant applied for Leave to Appeal on 17 June 2025 and the arguments in support of the application for Leave to Appeal was heard on 2 September 2025.

The basis for the application

- [4] The applicant contends that the court *a quo* erred in the following respects
- (i) In finding that the matter was not urgent as the continued violation of the court order establishes urgency;
 - (ii) Attempts to resolve a dispute out of court before approaching the court does not constitute self-created urgency;
 - (iii) In finding that a delay in instituting the application amounts to a ground for concluding that the matter was urgent;
 - (iv) The court *a quo* misdirected itself in finding that the contemptuous conduct of the respondent does not intentionally and deliberately violate the dignity, repute and authority of the court;
 - (v) In finding that the fourth leg of the test for contempt was not met the court *a quo* misdirected itself as the respondent did not provide any explanation for the contempt.

- (vi) Likewise did the respondent not establish reasonable doubt in respect of the wilfulness of the contemptuous conduct as she provided no reason for not complying with the court order. The finding by the court *a quo* that the contemptuous conduct was not wilful is consequently unsubstantiated;
- (vii) In not finding in favour of the applicant the contempt continues and similarly so does the harm to the applicant, leaving the applicant with no alternative remedy. This constitutes exceptional circumstances which were not considered by the court *a quo*.

The criteria for leave to appeal

[5] Section 17(1)(a) of the Superior Courts Act¹ contains the criteria for the granting of leave to appeal namely:

- (i)where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success;
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[6] When considering an application for leave to appeal the judge must be persuaded that a sound rational basis exists as the basis for concluding that if leave should be granted the appeal would have a reasonable prospect of success.²

[7] The provision in section 17(1) that: "Leave to appeal may only be given..." and section 17(1)(a)(i) that: "The appeal would have a reasonable prospect of success" has obtained statutory force and has consequently become

¹ Act 10 of 2013

² Four Wheel Drive v Ratten N.O. 2019 (3) SA 451 (SCA). MEC for Health, Eastern Cape v Ongezwa Mkhitha and The Road Accident Fund (1221/2015) [2016] ZASCA 176 (25 November 2016).

peremptory. The former requirement of “If there is a reasonable prospect that another court may come to a different conclusion than the one reached by the Court *a quo*”³ has now become: “....may only be given if there would be a reasonable prospect of success.” The effect of this wording is that a discretion has been replaced by a mandatory and obligatory requirement having the effect that leave may not be granted if there is no reasonable prospect that the appeal will succeed.

- [8] For the above threshold to be met a possibility of success or a case that is arguable or a case that is not hopeless is not sufficient.⁴
- [9] The effect of the requirement in section 17 is that the threshold for the granting of leave to appeal has been increased by the replacement of the word “may” with the word “would”.⁵ This replacement together with the inclusion of the word “only” not only results in a more stringent test⁶ but creates a higher degree of certainty⁷ and furthermore prevents parties being subjected to the inconvenience and expense to deal with a meritless appeal.⁸

³ Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T)

⁴ MEC for Health Eastern Cape (n 2 above) Fusion Properties 233 CC v Stellenbosch Municipality [2021] ZASCA 10 (29 January 2021). Fairtrade Tobacco Association v President of the Republic of South Africa (21686/2020) [2020] ZAGPPHC 311

⁵ Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others [2016] ZAGPPHC 489 (24 June 2016) Chithi and Others; in re: Luhlwinini Mchunu Community v Hancock and Others [2021] ZASCA 123 (23 September 2021) Seathlolo v Chemical Energy Paper Printing Wood and Allied Workers Union (2016) 37 ILJ 1485 (LC).

⁶ Gopaul and Another v Lutsham and Others (13185/2016D) [2019] ZAKZDHC 5 (17 May 2019)

⁷ The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others. Matoto v Free State Gambling and Liquor Authority and Others (4629/2015) [2017] ZAFSHC 80 (8 June 2017).

⁸ Four Wheel Drive v Ratten N.O. (n 2 above)

[10] The test to be applied is consequently higher and more stringent than the one contained in the repealed Supreme Court Act, Act 59 of 1959.⁹

[11] For an applicant to succeed such applicant would have to persuade the court on proper grounds that the prospect of success is not remote but has a realistic chance of success which is based on an objective analysis of the law and the facts.¹⁰

[12] Section 17 however contains an additional basis on which a court may grant leave to appeal, namely the existence of some other compelling reason for the appeal to be entertained.

[13] Compelling reasons would be the existence of an important question of law of wider significance requiring the effort and attention of an appeal court¹¹, a discreet issue of public importance that will have an effect on future decisions¹², or that the administration of justice requires the appeal to be heard¹³, conflicting judgments on the specific questions in issue and considerations in respect of the interests of justice¹⁴ and lastly a discreet issue of statutory interpretation having implications for future cases.¹⁵

⁹ Notshokovu v S [2016] ZASCA 112

¹⁰ S v Smith 2012 (1) SACR 567

¹¹ JK Structures CC v City of Cape Town and Others [2023] ZAWCHC 93

¹² Ramakatsa v African National Congress (724/2019) [2021] ZASCA 31 (31 March 2021).

¹³ Talhado Fishing Enterprises (Pty) Ltd v Firststrand Bank Ltd t/a First National Bank (1104/2022) [2023] ZAEQBHC 16 914 March 2023)

¹⁴ Kinfisher Fuels CC t/a Braamfontein v BP Southern Africa (Pty) Ltd and Another (2023/048927) [2025] ZAGJHC 366 (7 April 2025)

¹⁵ Discovery Health (Pty) Ltd v Road Accident Fund and Another (Leave to Appeal) (2023-117206) [2025] ZAGPPHC 363 (9 April 2025)

- [14] In the consideration of compelling reasons the merits are of paramount importance and often crucial.¹⁶

Discussion

- [15] The contention that the conduct of the respondent amounts to a continued violation of the court order is unsubstantiated. The respondent made payments, which was admitted by the applicant.
- [16] However, during the course of the unwinding of the relationship between the parties a dispute arose in respect of calculations of outstanding amounts. In the context of these disputes proposals were made as well as requests for the provision of proof of rates and taxes accounts and the calculation of the alleged outstanding amount. The applicant did not respond to the requests neither did he respond to the proposals.
- [17] The respondent in turn accepted the proposal of the applicant in respect of the transfer of the property to the name of the applicant which proposal included an amount as a breakeven amount in respect of the portion of the proceeds of the sale of the property due to the respondent.
- [18] The applicant's main contention in respect of urgency is that the non-compliance with the court order puts his credit record at risk and as he is

¹⁶ Caratco (Pty) Limited v Independent Advisory (Pty) Limited 2002 (5) SA (SCA)

employed by a commercial bank an unfavourable credit record is to his detriment when he is considered for promotion.

[19] The reason for the impasse between the parties is due to the disputes in respect of the calculation of outstanding payments. The respondent has made settlement proposals to which the respondent have not responded. The applicant is the architect of his own calamity in this regard. Similarly in respect of the outstanding rates and taxes and levies.

[20] The applicant contends that the court erred in ruling that the matter is not urgent based on attempts to settle the matter. It was during this time that he received a letter of demand from the property management company in respect of alleged arrears levies. This already constituted a risk to his credit record. Despite this he waited approximately three months to launch his application.

[21] The applicant has not made out a case that the appeal would have reasonable prospects of success.

[22] During argument it was submitted that the compelling reasons for leave to be granted is located in the fact that the contemptuous conduct and consequently the harm is ongoing. This does not constitute compelling reasons as mentioned in the authorities above. I found no other compelling reasons to be present.

Conclusion

[23] Based on the above reasons I make the order in paragraph 1 above



E Raubenheimer

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **8 September 2025**.

COUNSEL FOR THE PLAINTIFFS:

Adv M Mfeka

INSTRUCTED BY:

Mshengu and Associates

COUNSEL FOR THE RESPONDENT:

Adv M Silawule

INSTRUCTED BY:

Matlala K Inc

DATE OF ARGUMENT:

2 September 2025

DATE OF JUDGMENT

8 September 2025