



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 130119/2024

(1) REPORTABLE: no
(2) OF INTEREST TO OTHER JUDGES: no
(3) REVISED:
 SIGNATURE 22 August 2025 DATE

In the matter between:

IDEXIS (PTY) LTD t/a SENTRA PHARMACY

First Applicant

DR RUAAN LOUW

Second Applicant

and

NOVO NORDISK (PTY) LTD

Respondent

In Re:

NOVO NORDISK (PTY) LTD

Applicant

and

IDEXIS (PTY) LTD t/a SENTRA PHARMACY

First Respondent

DR RUAAN LOUW

Second Respondent

**THE SOUTH AFRICAN HEALTH PRODUCTS
REGULATORY AUTHORITY**

Third Respondent

THE SOUTH AFRICAN PHARMACY COUNCIL

Fourth Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such 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 for handing down is deemed to be 22nd August 2025.

JUDGMENT: LEAVE TO APPEAL

RETIEF J

INTRODUCTION

[1] The applicant, IDexis Compounding Specialists (Pty) Ltd t/a Sentra Pharmacy applies for leave to appeal to the Supreme Court of Appeal [SCA], alternatively to the 'Full Bench' of this Honourable Court against the whole of the judgment and order in which the Court dismissed its interlocutory application to compel discovery, in motion procedures, on the 8 April 2025 [leave].

[2] Although Counsel for the applicant did not address the fact that leave to appeal to the Full Bench is not competent in the circumstances, as leave should be sought to the Full Court and not the Full Bench, it did not form part of the argument before the Court and this Court accepts that the same was possibly a typographical error.

[3] At the time of the hearing, it became clear that the applicant's leave was confined to the applicant's compel relief regarding one outstanding document sought in terms of rule 35(12) and the punitive cost ordered. The remaining one document is document 2 as requested in terms of the Applicant's rule 35(12) 35(13), (14) and (15) discovery notice dated the 28 November 2024 [notice].

[4] For the sake of clarity at the date of the hearing, the applicant's Counsel, without opposition and with leave, moved for an amended draft order which did not, in all respects, accord with the applicant notice of motion. In terms of such draft order, the applicant's sought document 2 specifically under both rule 35(12) of the Uniform Rules and in terms the general application of the notice itself. The former specific request the subject of the leave.

[5] The applicant's call for document 2 in terms of rule 35(12) emanated from paragraph 15 of the respondent's founding papers in which the respondent referred to the fact that it had made an application for the registration of Wegovy with the South African Health Products Regulatory Authority, the third respondent in the main application. The application process had not been finalised at the time the main application was launched.

[6] Before dealing with the merits of the leave, the appealability of the order in such interlocutory proceedings was raised. The outcome of the enquiry will dictate whether a necessity arises to deal with the merits of the leave.

DISCUSSION

Is the order of the 8 April 2025 appealable?

[7] The respondent argues that the applicant seeks leave to appeal the dismissal of an interlocutory application to compel discovery and accordingly, the order that was granted is not final in effect and therefore not appealable. For this proposition the respondent relies on the pre constitutional matter of South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd matter¹ in which the Court

¹ 1977 (3) SA 534 (A) at 549F.

reiterated "a fairly settled rule for testing appealability" and stated whether an order is interlocutory or not in wide and general terms "*interlocutory*" refers to "*all orders pronounced by the Court, upon matters incidental to the main dispute, preparatory to, or during the progress of, the litigation. But orders of this kind are divided into two classes; (i) those which have a final and definitive effect on the main action, and (ii) those, known as "simple (or purely) interlocutory orders" or "interlocutory orders proper," which do not.*"²

[8] Then, the respondents with reference again to another pre constitutional matter of Zweni v Minister of Law and Order of the Republic of South Africa,³ [Zweni matter] relied on the common-law core principle to the appealability of court orders. The core principle in the Zweni matter being that an order must be final in effect and not be susceptible of alteration by the Court of first instance, it must be definitive of the rights of the parties, and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[9] The applicant on the other hand correctly referred this Court to the overarching principle that interlocutory orders may be appealable considering the facts. In that, certain factors may arise in a particular case, which vary from case to case which may be decisive when weighing up whether it may be in the interest of justice, that notwithstanding the Zweni traditional core principle, that the appeal should be heard. In short, the core principle is merely one consideration to be applied and that other factors for consideration will emanate from the facts of each matter.

[10] Flowing from that, the Constitutional Court [CC] in the United Democratic⁴ Movement matter explained that whether or not the order is lacking in one or more of the factors set out in Zweni matter if, it is in the interest of justice, then the order,

² *Ibid* 1. See generally *Bell v Bell* 1908 T.S. 887 at pp.890-1; *Steytler N.O. v Fitzgerald*, *supra* at pp.303, 311, 325-6, 342; *Globe and Phoenix Gold Mining Company Limited v Rhodesian Corporation Limited* 1932 AD 146 at pp.153, 157-158, 162-3; *Pretoria Garrison Institute v Danish Variety Products*, *supra* at pp.850, 867.

³ 1992 ZASCA 197, 1993 (1) All SA 365 (A). Also see *Ewels v Francis and Others (Leave to Appeal)* 2025 JDR 1195 (WCC).

⁴ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* [2022] ZACC 34; 2023 (1) SA 353 (CC), 2022 (12) BCLR 1521 (CC).

as in this case the interlocutory order is appealable and the appeal to be heard. Applying the reasoning of the CC to the enquiry, notwithstanding the possible nature of the order in terms of the Zweni matter, this Court considers a number of case specific factors to determine whether it is in the interest of justice that the order is appealable and the appeal to be heard. These factors are:

10.1. In respect of document 2, the respondent in terms of rule 35(12)(a)(iii) procedurally objected to the production of the document and set out its grounds. Rule 35(12) however, does not set out a means for the determination of such grounds of objection because it has its own built-in sanction being rule 35(12)(b). The sanction, a litigant's inability to use the document without leave of the Court. Absent invoking subparagraph (b), a basis to rather compel the discovery after an objection has been raised is required. A proposition argued by the respondent as a preliminary objection to the applicant's compel relief. In short, without a basis to compel by means of a rule 30A notice no basis existed for the applicant to simply launch the compel relief as it did on the strength of a letter request. The respondent's argued that the applicant's compel relief sought in terms of rule 35(12) was baseless and constituted an abuse of process. This procedural argument and objection the respondent's relied on *in lieu* of its rule 30 application. The applicant's compel relief in respect of the rule 35(12) as reasoned was not substantiated in terms of the rules and as such the procedural right to compel amiss therefore not attracting the respondent's obligation in terms of 35(12), absent rule 30A notice.

10.2. In the applicant's unamended notice of motion, prior to the preliminary objection raised by the respondent in answer, the applicant sought condonation specifically for the delivery of the rule 35(14) part of the discovery notice. However, at the hearing and as a result of the preliminary point taken as discussed above, the applicant's condonation prayer, without supplementing its evidence, simply morphed into the following first prayer: "*1. Condonation, insofar as it is necessary, for the non-compliance with the Uniform Rules of Court;*".

In this way the applicant intended to widen the reach of condonation without being specific and, as reasoned, without dealing with condonation for the procedural non-step to lay a basis for the 35(12) compel relief. However in the applicant's leave, it now states that, in so far as condonation in respect of this procedural non-step, both parties knew precisely what the amended condonation prayer 1 was in the amended draft order and, if interpreted in context, it was the alleged non-compliance of rule 30A. In the reasoned judgment, this Court dealt with the necessity for condonation absent the rule 30A notice to trigger the compel relief and, considered the respondent's objection, it considered the applicant's amended prayer 1 for condonation and pointed out that no facts upon which condonation in respect of this point was dealt with and therefore none granted. The inevitable is that on the applicant's own papers no basis for the compel relief in terms of rule 35(12) was triggered.

10.3. Due to the wording of rule 35(12), the order in respect of the rule 35(12) may not be a final pronouncement in the collection of the applicant's evidence. This proposition too, is bolstered by the Court's finding that no compel relief was correctly before it in terms of rule 35(12). The applicant relies on the wording of 'at any time during the proceedings before the hearing' as provided for in rule 35(12) This reliance must be seen against the procedural fact that the applicant on its own version stated that the answering affidavit it filed was only preliminary and therefore, it intends to file a final answer notwithstanding the fact that the respondent has filed its replying affidavit. The application of rule 35(12) on its own version, may very well still be alive.

10.4. Even if the Court is incorrect that the compel relief was correctly before it and that, it procedurally cannot invoke rule 35(12), both parties have taken their own procedural steps after the order was granted. The evidence of such steps, with leave, was placed before the Court at the date of the hearing of this application. Of consideration is the fact that,

the respondent provided the applicant with a copy of registration certificate issued by the third respondent. This, the outcome of the application referred to in paragraph 15 of the applicant's founding papers and the origin of the document 2 compel relief. The respondent also, under oath stated that all relevant documents in its possession regarding the registration of Wegovy have been provided. The practicality of granting an appeal regarding document 2, thereby staying the adjudication of the main relief when the main issue does not turn on the appeal process of Wegovy before the third respondent, appears impractical and without effect.

- 10.5. Other than the compel relief pertaining to document 2, the applicant requests leave to appeal the costs order. The cost order has final effect but will not be in the interest of justice to delay the determination of the main application purely to appeal costs as envisaged in terms of the Superior Court's Act 10 of 2013 [the Act] unless exceptional circumstances are present. This Court has reconsidered its reasoned judgment and the facts it relied on in the exercise of its discretion and is of the opinion that the applicant has not met the threshold of section 17 of the Act on the issue of costs and no exceptional circumstances are apparent.

[11] Having considered all the factors the appealability of the interlocutory order is not in the interest of justice and the Court is of the opinion that the applicant has failed to meet the threshold of section 17 relating to leave to appeal the cost order.

[12] There is no reason why costs should not follow the result. Both parties in this application for leave seek punitive costs, none warranted. The Court too is fully appraised of the respondent's conditional offer to the applicant regarding its claim for costs awarded as a result of in the compel order.

[13] In the premises, the following order';

1. The application for leave to appeal is dismissed with costs, including the costs of two Counsel if so employed, the one being Senior Counsel and such costs to be taxed on scale C and Junior Counsel on scale B.


L.A. RETIEF

Judge of the High Court
Gauteng Division

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Date of hearing: 25 July 2025
Date of judgment: 22 August 2025