



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

JUDGMENT

Not Reportable

Case no: 14817/2024

In the matter between:

WEITZ VILJOEN AND ASSOCIATES

INCORPORATED

PLAINTIFF/RESPONDENT

and

RISING DRAGON CONSULTING (PTY) LTD DEFENDANT/APPLICANT

T/A ANTONIE CONSULTING

Neutral citation: *Weitz Viljoen and Associates Inc v Rising Dragon Consulting (Pty) Ltd* (Case no 14817/2024) [2025] ZAWCHC ... (30-09-2025)

Coram: NUKU J

Heard: 22 September 2025

Delivered: 30-09-2025

Summary: **Practice** – Application for leave to appeal, in terms of section 17(1) of the Superior Courts Act, 10 of 2013, against an adverse costs order

without a challenge to the merits of the court's judgment – an applicant in such instances faces a formidable hurdle in that the granting of a costs order involves an exercise of a true discretion and an appellate court will not interfere with the exercise of that discretion, unless there was a material misdirection by a lower court – reasonable prospects of an appeal dependent on the showing of a material misdirection by the court – no material demonstration has been shown and as such the appeal has no reasonable prospects of success.

ORDER

Application for leave to appeal is refused with costs, including costs of counsel on scale A

JUDGMENT

Nuku J

[1] The applicant in this application for leave to appeal is the defendant in the main action, was the excipient in the exception proceedings, and was the respondent in a Rule 30 application brought by the respondent in this application for leave, who is the plaintiff in the main action. For convenience, I refer to the parties as they are named in the main action.

[2] The exception proceedings were heard alongside the Rule 30 application, although they were not consolidated. The plaintiff was successful in both the exception proceedings and the Rule 30 application. All the exceptions raised by the defendant were dismissed, and the further pleadings the defendant filed after the exception were dismissed as an irregular step. As a result, the defendant was ordered to pay the plaintiff's costs of suit, including counsel fees on scale A.

[3] In this application for leave to appeal, the defendant does not challenge the order dismissing the exception or the order upholding the Rule 30 application. Instead, it seeks leave to appeal only the adverse costs order made against it.

[4] The grounds for the defendant's intended appeal are that the court erred and misdirected itself by improperly exercising its discretion to award costs against the defendant based on incorrect principles and/or by misinterpreting the facts, failing to consider all relevant and unique circumstances of the case, which include several factors I discuss below.

[5] The main issue here, it was argued, is that the court overlooked important and unique circumstances that justified departing from the general rule that costs follow the result. During the hearing, Mr. Dreyden, the defendant's sole director and the representative throughout these proceedings, explained that this ground mainly contends that the court paid no regard to (a) the provisions of Rule 67A (2) of the Uniform Rules of Court (the Rule 67 complaint), (b) the provisions of Rule 41A of the Uniform Rules of Court (the Rule 41A complaint), and (c) the plaintiff's failure to meet the deadlines for submitting an application under Rule 30 (the delay complaint).

[6] The main point of the Rule 67 complaint is that one factor the court must consider when deciding on costs is whether the application or action could have been instituted in another forum where costs are likely to be lower than those of the High Court. Mr. Dreyden argued that the plaintiff could have brought the main action in the Magistrates' Court, and its failure to do so, along with other factors, justifies denying it costs despite its success.

[7] There are, however, several issues with the defendant's argument. First, based on the facts, this court needed to determine the exception raised by the defendant to proceedings instituted in this Court. Second, the court had to consider a Rule 30 application triggered by an irregular step taken by the defendant in ongoing proceedings before this court. Third, the court did not evaluate the merits or demerits of the main action. Therefore, it would have been premature to decide whether initiating proceedings in this court was justified. Considering all of this, the question of whether the exception proceedings or the Rule 30 application could be brought in another forum does not arise and is not a factor the court could reasonably consider.

[8] The main issue of the Rule 41A complaint is that the defendant, in line with Rule 41A of the Uniform Rules, showed willingness to submit the dispute in the main action to mediation, while the plaintiff refused to do so. Mr. Dreyden argued that the plaintiff's refusal to mediate the main dispute justifies denying it an award for costs.

[9] The defendant's argument is not sustainable for similar reasons as those in the Rule 67 complaint. As already stated, the issue for consideration by the court was interlocutory proceedings in the form of an exception as well as a Rule 30

application. Any argument that strays beyond the proceedings that were to be determined by the court cannot assist the defendant.

[10] Regarding the delay complaint, failing to meet the prescribed timeframes is a factor that a court must consider when deciding issues of costs. This was one factor that weighed against awarding costs to the plaintiff, but it was outweighed by other considerations, leading to the conclusion that fairness calls for costs to follow the result. Other factors favouring the plaintiff include the fact that the defendant raised several unmeritorious exceptions and points in limine, which, in the court's view, caused the plaintiff to incur costs it should not have had to bear.

[11] None of the grounds for the intended appeal, as discussed above, have any merit. However, these were not the only grounds the defendant pleaded. The other grounds, which were not pursued vigorously, included the fact that (a) the plaintiff is an attorney's firm that could have represented itself, (b) the fact that the plaintiff's attorneys of record are in association with the plaintiff, (c) the fact that the defendant is a wholly black-owned business, (d) the unfairness of awarding costs against a self-represented litigant when no such costs may be awarded in its favour, even if successful, and (e) it would be just and equitable to have ordered that costs be costs in the cause.

[12] These additional grounds for the intended appeal were not based on the facts or the law but were simply a plea for mercy by the defendant. As the Supreme Court of Appeal has stated in **Ramakatsa**¹, *'the test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different from that of the*

¹ Ramakatsa & Others v African National Congress & Another [2021] ZASCA 31 (31 March 2021) at para [10]

trial court.’ The defendant has failed to meet the threshold requirement for the granting of leave to appeal and for that reason the application for leave to appeal cannot succeed.

[13] There is also another reason why leave to appeal should be refused, and it is what the Supreme Court of Appeal stated in Zuma², namely that an applicant for leave to appeal who does not seek to appeal the merits of the judgment faces a formidable hurdle in that the granting of a costs order involves an exercise of a true discretion and an appellate court will not interfere with the exercise of that discretion, unless there was a material misdirection by a lower court. The defendant has failed to demonstrate any material misdirection by the court in awarding the costs to the plaintiff. For all of the above reasons, leave to appeal is refused and no cogent reasons have been advanced why costs should not follow the result. Costs of counsel shall be awarded on scale A.

Order

[70] In the result I make the following order:

The application for leave to appeal is refused, and the defendant/applicant is ordered to pay costs, including the costs of counsel on scale A.

² Zuma v Office of the Public Protector and Others (1447/2018) [2020] ZASCA 138 (30 October 2020) at para [19]

L G NUKU
JUDGE OF THE HIGH COURT

Appearances

For plaintiff/respondent:	MM Van Staden
Instructed by:	CK Attorneys, Bloubergstrand
C/O:	Bisset Boehmke McBlain Attorneys, Cape Town
For defendant/applicant:	Mr D D Dreyden, in his capacity as the director of the defendant