



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

JUDGMENT

Not Reportable

Case no: 17470/2014

In the matter between:

**TECHNICAL SYSTEMS (PTY) LTD
LAVIRCO BELEGGINGS (PTY) LTD**

and

**RTS INDUSTRIES
C QUIPTECH (PTY) LTD
CGC INDUSTRIES (PTY) LTD
CHRISTAAN ARNOLDUS KURTZ
CARL WILLIAM RITCHER**

**FIRST APPLICANT
SECOND APPLICANT**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

Neutral citation: *Technical Systems (Pty) Ltd and Another v RTS Industries and Others* (Case no: 17470/2014) [2025] ZAWCHC ... (3 October 2025)

Coram: **NUKU J**

Heard: 15 September 2025

Delivered: 3 October 2025

Summary: Practice – application for leave to appeal a cost order only – heightened threshold due to costs being in the discretion of the court – an appeal would have no reasonable prospects of success where no misdirection is alleged.

ORDER

- 1 The application for leave to appeal is refused; and
 - 2 The applicants jointly and severally, the one paying the other to be absolved, are directed to pay the party and party costs, including costs of counsel on scale B.
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JUDGMENT

Nuku J:

[1] This is an application for leave to appeal a costs order issued against the respondents after the parties had settled two applications between them.

[2] The first application, which the applicants had instituted, aimed to determine whether the production facility that the first respondent planned to put into operation infringed on the applicants' confidential information and copyright (the first application).

[3] The second application was instituted by the respondents, seeking the cooperation of the applicants to prepare a report about another production facility they planned to commission in place of the one that prompted the applicants to initiate the first application (the second application).

[4] These applications were prompted by an agreement made between the parties in 2015, which required the respondents to subject any production facility to inspection before it could be put into operation.

[5] In the first application, the experts that had been engaged to inspect the production facility disagreed on whether that production facility infringed on the applicants' confidential information and copyright. It, however, became unnecessary to resolve this dispute once the respondents indicated that they no longer intended to put that production facility into operation.

[6] One of the considerations that the Court took into account, in awarding costs against the respondent, was the fact that the respondents' indication that they no longer intended to put the production facility which was alleged by the applicants to be infringing on their confidential information and copyright amounted to a withdrawal of the defence. This is because the entire litigation was prompted by the respondents' intention of putting the production facility into operation.

[7] Similar to the first application, the second application was driven by the respondents' desire to put an alternative production facility into operation. The

applicants argued that the alternative production facility was not suitable for meaningful inspection because it was incomplete. The agreement the parties ultimately reached made it unnecessary to resolve that dispute. This is because the respondents were not going to proceed with their plan to put the alternative production facility into operation. In essence, the respondents withdrew the second application, and this was one of the factors the court considered when determining costs.

[8] The respondents argue, in their application for leave to appeal, that the Court should not have awarded costs against them for the first application because the applicants did not seek any substantive relief in that application. They also claim that the costs related to the first application were already covered by a previous court order issued by Bishop AJ.

[9] None of these arguments have any merit. First, as the applicants point out, the judgment being appealed clearly states in paragraph [20] that the costs awarded in that judgment do not include any costs determined by Bishop AJ. Second, the argument that there was no substantive relief sought by the applicants is disingenuous, to say the least. The respondents are well aware that the first application was aimed at resolving the disputes between the parties' respective expert opinions. The resolution of the disagreement between the parties' experts would determine whether the respondents could put their production facility into operation.

[10] The respondents also argue that the determination of qualifying fees for the experts in this application effectively prejudices the same issue in a pending case

between the parties involving the same experts. This argument, however, is unsustainable. This Court only determined issues that have arisen in this application and did not consider what has happened or might happen in a pending action between the parties.

[11] To the extent that it may be suggested there may be some overlaps, it is for the respondents to bring that to the attention of the trial court. And the respondents can easily do so with a court order that determined part of the costs between the parties.

[12] It was correctly submitted on behalf of the applicants that an applicant seeking leave to appeal solely a costs order faces a higher threshold. This is because cost orders are discretionary decisions of the court, and an appellate court will only interfere if that discretion was not exercised judicially, for example, on wrong principles, due to misdirection on the facts, or when the decision is clearly wrong.¹

[13] Since the applicants have not alleged that the Court misapplied the relevant authorities or that its summary of facts and the parties' arguments is incorrect, it was argued that the respondents have failed to demonstrate a basis for which a court of appeal would be entitled to interfere.

[14] There is merit in these submissions, as demonstrated by the respondents' argument that an appropriate order in this case would be to make 'no order as to costs.' While such an order falls within the broad range of orders the court could

¹ *Merber v Merber* [1948] 1 SA 446 (A), p443

issue, it does not necessarily mean that the order the court actually made was clearly wrong. That being the case, I am not persuaded that the respondents have met the requirements for leave to appeal. Leave is accordingly refused with costs to follow the result.

Order

[15] As a result, I make the following order:

- a) The application for leave to appeal is refused; and
- b) The applicants jointly and severally, the one paying the other to be absolved, are directed to pay the party and party costs, including costs of counsel on scale B.



LG NUKU
JUDGE OF THE HIGH COURT

Appearances

For applicants: J Van Der Merwe SC, and M de Wet
Instructed by: De Klerk and Van Gent Inc, Cape Town

For respondents: G Myburg SC with K Rotas
Instructed by: Bossr Inc, Durbanville
C/O: Robert Charles Attorneys, Cape Town