



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

Reportable

CA NO: 72/2024

HC CASE NO: 4112/2023

In the matter between:

ZILWA ATTORNEYS INCORPORATED

1st Appellant

HYMIE ZILWA

2nd

Appellant

THE SHERIFF: EAST LONDON

3rd

Appellant

And

ROAD ACCIDENT FUND

Respondent

Neutral citation: *Zilwa Attorneys Incorporated V Road Accident Fund*
(CA 72/2024).

Coram: NHLANGULELA AJP, MAJIKI J, NOBATANA AJ

Heard: 12 MAY 2025

Delivered: 29 AUGUST 2025

Summary: appeal against orders suspending operation and execution of court orders, and granting stay of execution pending finalization of an application for leave to appeal - mootness - decision of merits in the interests of justice – appeal upheld with cost in favour of the appellant.

NEW ORDER

On appeal from: the judgment of Rugunanan J sitting as a court of first instance.

1. The appeal is upheld with costs. Such costs include the costs of two counsel.
2. The order of the court a quo is set aside and replaced by the following order:
 - 2.1 The main application is dismissed with costs. Such costs include the costs of two counsel.
3. All the costs shall be paid in terms of scale B of Uniform Rule 67A.

VARIATION I.T.O. RULE 42 (1) (b)

Nhlangulela AJP (Majiki J and Nobatana AJ concurring)

[1] In the judgment that was delivered on 28 August 2025, an order granted would have been predicated on the terms that are encapsulated in the concluding paragraph that reads:

‘Conclusion:

[21] The interpretation of s 18 (1) of the Act, read with Rules 49 (1) (b) reveal that a precondition for suspension of operation and execution of a judgment or order is the existence of an application for leave to appeal that was brought within 15 days after judgment; or within such extended time thereafter that would have been authorised by the court as envisaged in Rule 49 (1) (b). Having found that the application for leave does not comply with Rule 49, coupled with the non-existent order of a court extending 15 days, the operation and execution of the orders by Mjali J was not the subject of an application for leave to appeal, or an appeal, as contemplated by the legislature in s 18 (1). Therefore, the belated application for leave to appeal a High Court lapsed, with the consequence that the judgment against which leave to appeal is sought is excluded from the operative effect of section 18 (1).’

[2] But the order that followed went in the direction that was not predicated on the judgment. Upholding the appeal, not striking it from the roll, is the intended outcome that reflects the reasoning adopted throughout the judgment.

[3] Upon reflection, and soon after the delivery of the judgment, it dawned that the order granted contradicted the intention of the judgment. For that reason, it falls to be varied by the court in the exercise of its power as given in terms of Rule 42 (1) (b) of the Uniform Rules of Court¹. The variation will not prejudice the parties.

¹ The permissible power to correct patent error or omission -see: *Seattle v Protea Assurance Co. Ltd* 1984 (2) SA 537 (C); as opposed to unauthorized changing of the judgment: see: *Firestone SA (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A).

[4] Accordingly, the previous order falls to be varied, and replaced by a new order that reads in the following terms:

Order:

In the result, the following order shall issue:

1. The appeal is upheld with costs. Such costs to include costs of two Counsel.
2. The orders made in the court *a quo* are set aside, and are replaced by the following order:
 - 2.1 The urgent application is dismissed with costs.
3. The costs incurred in this Court and court *a quo* shall be paid on scale B referred to in Uniform Rule 67A.

Z. M. NHLANGULELA
ACTING JUDGE PRESIDENT OF THE HIGH COURT

I concur:

B. MAJIKI
JUDGE OF THE HIGH COURT

I concur:

M NOBATANA

ACTING JUDGE OF THE HIGH COURT

Appearing for the respondents: Adv. A. M. Bodlani SC
Instructed by: Messrs Zilwa Attorneys Inc
MTHATHA.

Appearing for the respondents: Adv. V. Notshe SC
Instructed by: Messrs Maponya Ledwaba Inc
c/o Messrs Mjulelwa Inc
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