

REPUBLIC OF SOUTH AFRICA



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

CASE NO: **23339/2022**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

..... 26 September 2025
SIGNATURE DATE

PRECIOUS MOHOMI obo MINOR: MDM

Applicant

and

MEC FOR HEALTH: GAUTENG PROVINCE

Respondent

JUDGMENT

GOEDHART AJ:

Introduction

[1] The applicant seeks leave to appeal against an order granted on 21 June 2025 in terms of which an urgent application for an interim payment in terms of Rule 34A was struck from the roll with punitive costs.

[2] The precise terms of the order against which leave to appeal is sought is as follows:

[2.1] The application, which was set down on 13 June 2024 for hearing on the urgent court roll of 18 June 2024 and argued on 19 and 20 June 2024, is struck from the roll.

[2.2] The costs of the urgent application are to be paid by Mr Malatji *de bonis propriis* such costs to include the costs of two counsel.

[2.3] Mr Malatji is precluded from charging his client for bringing this urgent application.

[2.4] A copy of this order and the Judgment is to be made available to the South African Legal Practice Council.

Condonation

[3] After the order was granted, the applicant's legal representative, Mr Malatji, representing the applicant, served a notice of intention to appeal on 29 June 2024. The reasons for the order was delivered on 6 August 2025. The amplified grounds for leave to appeal were thus due by 27 August 2025, but were only filed on 18 September 2025. By that stage, the respondent had already filed its heads of argument in the application for leave to appeal on 17 September 2025. Mr Dlamini SC who appeared for the respondent with Ms Rakgwale, submitted that the respondent did not require to amplify their heads of argument following receipt of the applicant's application for

condonation and the grounds for leave to appeal. The respondent opposes the application for condonation as well as the application for leave to appeal.

- [4] In regard to the application for condonation, Mr Malatji set out that he was off sick from the 19th of August 2025 until the 10th of September 2025. He attached to his application medical certificates from Drs Talbot and TT Shadung. I considered that Mr Malatji had made out a case for condonation. It was not unreasonable for Mr Malatji to require time after his illness to formulate the grounds for appeal. The respondent was able to deal with the application for leave to appeal without having to amend or amplify the heads of argument and was thus not materially prejudiced by the delay.

Grounds of appeal

- [5] In *Mont Chevaux*,¹ Bertelsman J held (*obiter dictum*) that the wording of subsection 17(1)(a)(i) of the Superior Courts Act 10 of 2013 raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. This view has also been endorsed by the SCA in *Notshokovu v S*,² and by the Full Bench of this Division.³

- [6] The application for leave to appeal is brought on the grounds that I erred in:

[6.1] striking off the matter with punitive costs and that I failed to

¹ *The Mont Chevaux Trust v Tina Goosen & 18 others* 2014 JDR 2335 (LCC) at para 6.

² (157/15) [2016] ZASCA 112 (7 September 2016) at para 2.

³ See also *Acting National Director of Public Prosecutions v Democratic Alliance (Society for the Protection of Our Constitution Amicus Curiae)* 2016 JDR 1211 (GP) at para 25.

consider the “discernment, procedures in terms of rule 34A(3) in the Uniform Rules of Court, Superior Courts Act, Section 16 of the Civil Proceedings Evidence, the Applicant’s expert evidence proffered by witnesses appointed, the children’s rights enshrined in the Constitution and the Children’s Act.”;

[6.2] preferring the “incorrect judgement of AJ Goodman and disregarded the judgement of Justice Yacoob.”;

[6.3] finding that the Applicant has not made out a proper case for urgent interim payment while the parties evidence calls for the minor to be assisted urgently;

[6.4] in “following the judgement of AJ Goodman”.

[7] Mr Malatji persisted with the grounds set out in paragraphs 6.2 and 6.4 above, notwithstanding the Constitutional Court order of 11 June 2024 refusing leave to appeal against the judgment of Goodman AJ directly to it, Goodman AJ’s order of 15 July 2025 dismissing the application for condonation and accordingly the application for leave to appeal, and the order of the Constitutional Court of 17 September 2025 in terms of which the apex Court considered a further application to it for relief which included prayers for rescission setting aside the orders made by Goodman AJ, Todd AJ, Bester AJ and this court. The Constitutional Court also granted a punitive costs order against Mr Malatji de *bonis propriis*, precluded him from recovering any fees or disbursements from the applicant in respect of that

application and directed the Registrar not to accept any further applications from the applicant in respect of matters arising from the action in the High court and in which rescission, direct access or leave to pursue a direct appeal is sought. Persisting with the grounds in paragraphs 6.2 and 6.4 in the face of the aforementioned orders, the last of which was delivered by the Constitutional Court a day before the grounds for leave to appeal were formulated, demonstrates a fundamental disrespect for these court orders. Upholding the rule of law requires respect for, and adherence to, the terms of a court order and the consequences of that order. Not only do these grounds have no prospects of success on appeal, but persisting with them constituted conduct unbecoming of an officer of the court.

[8] In respect of the grounds set out in paragraphs 6.1 and 6.3 above, the applicant had failed to satisfy the requirements for urgency, resulting in the striking order. Not only had the application been struck by Todd AJ from the urgent court roll the week before (whereafter Mr Malatji proceeded to re-enrol the matter on the urgent court roll for the following week), but the respondent's offer for an interim payment of R2 million had been accepted on 15 May 2024. All that remained was for Mr Malatji to ensure compliance with Goodman AJ's order of 1 February 2024, which he had failed to do. When an applicant fails to satisfy the requirements of urgency, the appropriate order is to strike the matter from the roll with costs.⁴

[9] Turning to the punitive costs order, the applicant has to show reasonable

⁴ *CSARS v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA) at 299I-300A.*

prospects that an appeal court would interfere with the exercise of the discretion. In *Blou v Lampert and Chipkin NNO and Others*⁵ Holmes JA held:

“... Now a court making an order as to costs has a discretion, to be exercised judicially on a consideration of all the facts; and in essence it is a matter of fairness to both sides; see Gelb v Hawkins, 1960 (3) SA 687 (AD) at p. 694 A, and Graham v Odendaal, 1972 (2) SA 611 (AD) F at p. 616A. Thus, it is that the power of interference on appeal is limited. The extent of the limitation was very crisply stated by TROLLIP, J., in Pretorius v Herbert, 1966 (3) SA 298 (T) at p. 302A, as follows -

‘The limits to which this Court on appeal can interfere with an order made by the magistrate as to costs is, I think, clear from Merber v Merber, 1948 (1) SA 446 (AD) at pp. 452, 453. The effect of the passages there is that the discretion as to costs must be judicially exercised by the trial Court, that is, there must be some grounds on which a court, acting reasonably, could have come to the particular conclusion; if there are such grounds then their sufficiency to warrant that conclusion is a matter entirely for the trial court's discretion, and the Court on appeal cannot interfere, even if it would itself have made a different order.’”

[10] Mr Malatji failed to set out any grounds demonstrating that there are reasonable prospects that the discretion I exercised in respect of costs would

⁵ 1973 (1) SA 1 AD at 15 E to H.

be interfered with on appeal. The discretion was exercised judicially on a consideration of the facts.

Appealability

[11] Moreover, an order is appealable if it satisfies the three requirements set out in *Zweni*⁶ being that the order must: (i) be final in effect and not susceptible to alteration by the court of first instance; (ii) be definitive of the rights of the parties meaning that it must grant definitive and distinct relief; and (iii) have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[12] The order granted on 21 June 2024 does not meet all three these requirements and is not appealable, and there are no compelling reasons that would justify granting leave to appeal.

Mr Malatji's conduct

[13] During his address, Mr Malatji, without any foundation whatsoever, saw fit to repeatedly refer to his opponents as “criminals”. This is wholly unacceptable behaviour for an officer of the court. It is also a contravention of the requirements of the Code of Conduct for Legal Practitioners published under the Legal Practice Act 28 of 2014.⁷ Mr Malatji's conduct is deserving

⁶ *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A), per Harms AJA at 532J-533A.

⁷ GN 81 of 10 February 2017. See clause 34.9 of the Code which stipulates that counsel shall not indulge in personal remarks about opposing counsel, whether in or out of court, and not to allow any antipathy that might exist between counsel and opposing counsel to intrude

of severe opprobrium which I intend to reflect in the costs order.

Order

[14] I make the following order:

[14.1] The application for leave to appeal is dismissed.

[14.2] Mr Malatji is to pay the costs of the application *de bonis propriis* on the attorney and client scale, such costs to include the costs of two counsel.

[14.3] Mr Malatji may not recover any fees relating to this application from the applicant.


GOEDHART AJ
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 19 September 2025.

Date of judgment: 26 September 2025

This judgment was handed down electronically by circulation to the parties' representatives via email.

upon the conduct of the matter. Mr Malatji, as a trust account advocate, is bound by the clause.

For the Applicant: Mr Malatji
 Malatji S Attorneys

For the Respondent: Adv W Dlamini SC
 Adv L Rakgwale

Instructed by: Motsoeneng Bill Attorneys Inc. (Ref: A Perivolaris)