

REPUBLIC OF SOUTH AFRICA



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

Case No: 2023/013189

DELETE WHICHEVER IS NOT APPLICABLE

REPORTABLE: ~~YES~~/NO

OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

06/10/2025
DATE


SIGNATURE

IN THE MATTER BETWEEN:

QUANE MOKOKA

APPLICANT

AND

JP MARKETS (PTY) LTD

FIRST RESPONDENT

JUSTIN PAULSEN

SECOND RESPONDENT

JUDGMENT – [LEAVE TO APPEAL]

SIWENDU J

[1] The Applicant, Mr Mokoka (Mr Mokoka) seeks the Court's leave to appeal to the Full Court against its judgment delivered on 13 May 2025. Mr Mokoka is the plaintiff in the action instituted against the respondents, JP Markets (Pty) Ltd (JP Markets). JP Markets are the defendants in the main action. For convenience, the parties are as referred to as appear in the judgment the subject of the application for leave to appeal.

[2] The appeal is in respect of an interlocutory order in which the Court:

- i. Dismissed of an application to strike out JP Markets' defence
- ii. Ordered Mr Mokoka to pay costs on Scale B.

[3] Mr Mokoka filed two applications of leave to appeal, namely:

- i. The application dated 16 May 2025; and
- ii. A "supplementary application" dated 3 June 2025.

[4] In the application of 16 May 2025, he states amongst others that:

"3. The Honourable Judge Siwendu she [sic] spin doctrine the Application whereas, the judgment is unacceptable because of the Honourable Judge Siwendu she pooh-pooed, waved away and dismissed and [sic] binding the Rule 21 (4) as if it does not exist."

He further states that:

"17 the Respondents on the 5th of February 2025 turned the Honourable Court into a Mickey Mouse Court that is a sufficient proof that the respondents got no bona fide defence."

[5] In the supplementary application dated 3 June 2025, he states amongst others that:

"7. The honourable judge failed to read and understand all my documents listed in my index filed on 15 January 2025. For example, the honourable judge failed to read and understand my story as narrated in my Chronology of Events filed on 15 January 2025. For example, the honourable judge ought to have read and see that my Notice requesting further particulars dated 1 March 2024 is not defective... For example the learned judge misread my heads of arguments or confused my facts contained therein. In terms of the law, the learned judge did not bother to

read the precedents I cited in my heads of argument and did not [did not] take into account the authorities I cited in my heads f [sic] argument...”

[6] Before I deal with the merits of the application, I am bound, to once more to make some observations about both applications, starting with the language employed by Mr Mokoka to address the Court. Although the vitriol was at first primarily directed at the respondents, the issue was raised with him at the hearing of the main application. As evident from the judgment appealed, Mr Mokoka tendered an apology by on account of “a misunderstanding.” The Court accepted the apology as rapprochement, on the grounds that Mr Mokoka was a self-representing litigant.

[7] As is evident from the notices of appeal and the grounds referred to above, Mr Mokoka is undeterred in the use unbecoming language, which is disrespectful of the Judicial Office and the Court. Since the conduct has become pervasive, it cannot be tolerated under any circumstances. I take this into consideration, when it comes to the costs of this application.

[8] Secondly, the bulk of the matters raised as ground for appeal constitutes background facts to several applications by Mr Mokoka. Some of the issues raised deal with factual disputes for determination at the trial. The sole issue relevant to the application for leave to appeal is whether the Rule 21 notice relied on by Mr Mokoka was removed. The judgment appealed makes it clear that Mr Mokoka relied on the notice of March 2024. The founding affidavit forming the basis of the application to strike out the defence referred to the same notice. The factual findings made are based on the information in his affidavit, which stood as evidence placed before it.

[9] However, at the hearing of the appeal, Mr Mokoka contended that his case was based on a different notice. The notice relied on is not part of the papers forming the basis of the Rule 21 application. He also relied on facts which were not set out in his founding affidavit. For this reason alone, the application lacks merit.

[10] Notwithstanding, several legal observations need to be made about the effect of the order granted. As held by the Court in the *SA Reserve Bank v Khumalo and another*:¹

“an appeal lies against an order that is made by a court and not against its reasons for making the order....”

- a. None of the matters raised in the application for leave to appeal are relevant to the order refusing the striking out application. Mr Mokoka correctly accepts that the grant of such an order is at the discretion of the court.
- b. On the principles in *Zweni v Minister of Law and Order*² if an order does not resolve the substantive rights of the parties but merely regulates their conduct until the final hearing, it lacks finality and, therefore, should not be appealable. To be appealable, a decision must be final in effect and not open to alteration by the court of first instance. It must be definitive of the rights of the parties. It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.
- c. The appeal is targeted at an interlocutory order refusing the striking out application, which is not dispositive of any of the substantive issues in respect of the claim or Mr Mokoka’s rights. These will be dealt with at a trial in due course.
- d. Dealing generally with interlocutory orders, albeit in the context of urgent interim relief, the Constitutional Court held in *South African Informal Traders Forum and others v City of Johannesburg and others; South African National Traders Retail Association v City of Johannesburg and others*³ that a Court would not without more agree to hear an appeal that impugns

¹ [2011] 1 All SA 26 (SCA) para 4.

² 1993 (1) SA 523 (A)

³ See *South African Informal Traders Forum and others v City of Johannesburg and others; South African National Traders Retail Association v City of Johannesburg and others* 2014 (6) BCLR 726 (CC)

an interlocutory decision, especially because such a decision is open to reconsideration by the court that has granted it.

[11] An appeal against a decision to refuse to strike out a defence would be an exception rather than the norm. There is no exceptional basis for granting the order striking out the defence.

[12] Turning to Mr Mokoka's prospects of success on appeal, s 17(1) of the Superior Courts Act 10 of 2013 (the Act) provides that leave to appeal may be given if:

"the appeal would have a reasonable prospect of success" or "there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration".

[13] The high threshold for granting leave to appeal has been subject to interpretation in several decisions by the Courts as articulated by the Supreme Court of Appeal (SCA) in *Fusion Properties 233 CC v Stellenbosch Municipality* as follows: –

“[18] Since the coming into operation of the Superior Courts Act, there have been a number of decisions of our courts which dealt with the requirements that an applicant for leave to appeal in terms of ss 17(1)(a)(i) and 17(1)(a)(ii) must satisfy in order for leave to be granted. The applicable principles have over time crystallised and are now well established. Section 17(1) provides, in material part, that leave to appeal may only be granted 'where the judge or judges concerned are of the opinion that-

'(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard. . .'

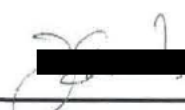
It is manifest from the text of s 17(1)(a) that an applicant seeking leave to appeal must demonstrate that the envisaged appeal would either have a reasonable prospect of success, or, alternatively, that 'there is some compelling reason why an appeal should be heard.'"

[14] As I have sought to demonstrate, Mr Mokoka's case fails to meet the threshold for a leave to appeal. It follows that the application must fail. What remain is the issue of costs, which must follow the result. For the reasons already stated, this case

warrants that the order for costs is consonant with the expression of Court's censure arising from its duty to protect its processes and its office from abuse.

[15] In the result, the following order is made:

- a. The application for leave to appeal is dismissed
- b. The applicant is ordered to pay respondents' costs at Scale C.



JUDGE NTY SIWENDU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION,
JOHANNESBURG

Delivered: This judgment was handed down electronically by uploading on Case Lines and circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be on the 6 October 2025.

Hearing Dates: 29 and 31 July 2025

Date Judgment delivered: 6 October 2025

Appearances:

For the Applicant:	In Person
For the First and Second Respondents:	Mr Herman Bonnet
Instructed by:	Burger Huyser Attorneys