

REPUBLIC OF SOUTH AFRICA



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

Case Number: **055795/22**

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: No

07/10/2025

DATE

SIGNATURE

In the matter between:

AZIZE EQUIPMENT (Pty) Ltd

Plaintiff/Respondent

and

MACHITE ENGINEERING CC

Defendant/Applicant

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

MANOIM J:

Introduction

- [1] This is an application for leave to appeal an order I gave in respect of a discovery application.
- [2] The party seeking leave to appeal is Machite Engineering CC, the defendant in this matter. The defendant had opposed the discovery application. I ordered the defendant to discover certain documents requested by Azize Equipment (Pty) Ltd, the plaintiff.¹ The defendant now appeals against that order.
- [3] Although the plaintiff has brought three claims against the defendant, only one of them- for payment of the balance of the purchase price - is relevant to the discovery dispute.

Nature of the case

- [4] The plaintiff sold two drilling rigs to the defendant. The contract was entered into in December 2019. The plaintiff alleges the agreement was partly written and partly oral. The nub of the dispute is over the purchase price for the rigs. The plaintiff alleges that it has only been part paid and the defendant owes it the balance of the purchase price for the equipment.
- [5] In its plea the defendant contends it has paid the full purchase price. If the defendant is correct, then on its version the price agreed to was approximately 44% less than the price contended for by the plaintiff.

¹ I will refer to the parties from now on as plaintiff and defendant in the interests of clarity.

[6] Hence the plaintiff seeks discovery of documentation from the defendant that it alleges will either show the price, or if the not the price, then the value of the drilling rigs, and hence may show that the defendant's version is implausible.

[7] The documents sought and which I ordered to be discovered were:

- The defendant's fixed asset register for the period between 10 December 2019 to date;
- All VAT returns submitted on behalf of the defendant to the South African Revenue Services for the period between 10 December 2019 to 28 February 2023;
- All the defendant's insurance policies relating to the two drilling rigs; and
- The defendant's financial statements for the years ending 2018 to 2023.

[8] The defendant had opposed the discovery on the basis of relevance. I found that the documents were relevant and hence my order.

Grounds of Appeal

[9] The defendant now seeks leave to appeal. Briefly the grounds of appeal relate to relevance and that the period for which the documents is sought is overbroad. In addition, in the application for leave to appeal, the defendant argues that the documents contain confidential information which the defendant should not have to discover to a rival.

Appealability of the decision

[10] Both parties agree that before I can consider the merits of the leave to appeal, I have to decide whether the decision is appealable. If not, then the defendant does not get out of the starting blocks.

[11] A decision to order discovery is not a final order. In terms of the *Zweni* decision, the locus classicus on this point, for a decision to be regarded as final it must possess all three of the following attributes.²

- a. The decision sought to be appealed must be final in effect which meant it must not be susceptible to alteration by the court appealed from;
- b. It must be definitive of the rights of the parties; and
- c. It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[12] Arguably an order to discover does not have any of these three attributes. But it is at least uncontroversial that it does not meet the third requirement, as it does not decide a substantial portion of the relief claimed. This is because it is no more than an order to produce the named documents. In a recent decision most in point on the matter, the Supreme Court of Appeal had to decide whether a regional court decision to compel discovery was appealable. The court explained why it was not:

“The upshot of the above is that the regional court’s order to compel the respondent to discover is purely interlocutory in nature. It has no final effect, is not a definitive proceeding, and does not have the effect of disposing of at least

² *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 536 A to C.

*a substantial portion of the relief claimed in the pending divorce action between the parties. Neither does it affect the rights of the parties whatsoever. The parties are still entitled to prosecute their case and are still at liberty to direct the court to any evidence and to advance any argument that they wish.*³

[13] The defendant then was faced with the problem of navigating around both *Zweni* and *HJ v PJ*. Counsel argued that recent Constitutional Court decisions have made it clear that the *Zweni* test is not the final word on appealability.⁴ Instead, in appropriate cases, courts should apply an ‘interests of justice’ test. It is based on the latter test that the defendant suggests the decision is appealable. Granted courts have grappled with the open ended nature of this test. But it can at least be accepted that where a case fails the *Zweni* test but passes an ‘interests of justice’ test, the facts must be exceptional.⁵

[14] Here the defendant argues that the information sought is commercially sensitive. It also contends that the plaintiff is its competitor. Thus, if the plaintiff were to have sight of this information it would irreparably damage the defendant. In this sense argued the defendant, the disclosure is final in effect as the sensitive information once revealed cannot be “unseen.”

[15] There are two problems with this argument. First it was never made out before me when the matter was heard and so the factual premise for this argument is not made out on the papers. For instance, it is alleged the two firms are

³ *H.J v P.J* (285/2023) [2024] ZASCA 55 (19 April 2024) paragraph 16.

⁴ See for instance *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at paragraph 53, where the Court held that the *Zweni* requirements were never without qualification.

⁵ See for instance *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* 2023 (5) SA 163 (SCA) at paragraph 30.

competitors. This is not in the papers. On the facts before me they appear to be supplier and customer, not competitors.

[16] But even if they are competitors this has not been recognised as a basis to deny discovery. Every day in commercial disputes firms are required to discover information that is otherwise private and may be viewed by a party they would rather did not have sight of it. Patent disputes, passing off, and unfair competition are just some examples.

[17] Then the defendant sought to rely on a judgment of Margo J in *Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd* as a basis for the commercial secrecy exception.⁶ In that matter Margo J upheld a defendant's contention that it should not have to disclose documents to the plaintiff which contained information which related to price because the plaintiff was a competitor. But this does not support the defendant in this case. In the latter case Margo J noted that the main issue was whether an agreement had been concluded and only then, if the issue was decided in favour of the plaintiff, would the defendant become obliged to disclose the prices during the relevant period. In other words the decision was that the discovery request was premature. It does not decide that such disclosure is not generally discoverable. In the present case the conclusion of the contract is not in dispute, but the price of the goods is. Hence it is presently relevant.

[18] Nor is there any rationale for an interests of justice argument to protect commercially sensitive documents from discovery. If anything creating a carve out for commercially sensitive documents would be contrary to the interest of

⁶ *Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd* 1971 (4)SA 589 W.

justice. They would prolong litigation, incentivise opportunistic delays and lead to great uncertainty.

[19] I find that no case is made out for finality in terms of *Zweni* and that no exception in the interests of justice is made out not to apply that case to the present facts. The result is that the decision is not appealable and leave to appeal must be denied.

ORDER

I make the following order:

1. The application for leave to appeal is dismissed.
2. The Applicant is ordered to pay the costs of the application.


MANOIM J
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

For the Plaintiff:	B van der Merwe
Instructed by:	Malherbe Rigg & Ranwell Inc.
For the Defendan:	L Molete
Instructed by:	Maphoso Mokoena Attorneys
Date of hearing:	26 September 2025
Date of Judgement:	07 October 2025