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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024/083096

HEARD: 25 SEPTEMBER 2025

DECIDED: 26 SEPTEMBER 2025

- 1) REPORTABLE: NO
2) OF INTEREST TO OTHER JUDGES: NO
3) REVISED.

SIGNATURE

DATE: 26 SEPTEMBER 2025

In the matter between:

ENKAY CAR WASH (PTY) LTD

Applicant

And

**TRIPOINT PROPERTY DEVELOPMENTS
(PTY) LTD**

First Respondent

SHERIFF OF THE HIGH COURT

Second Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 26 September 2025.

ORDER

1. The application for leave to appeal is dismissed with costs on a scale as between attorney and client.
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JUDGMENT

BAM J

Introduction

1. This is an application for leave to appeal the order of this court of 27 June 2025. The application is brought by the applicant, Enkay Car Wash (Pty) Ltd, (Enkay). In terms of the order, this court condoned the non-compliance with the Rules pertaining to service and time periods; suspended the operation of the court order dated 28 May 2025 until 20 July 2025; and further that in the event the applicant failed to vacate the premises by 20 July, the said court order shall come into full force and effect.
2. The order mentioned in paragraph 1 of this judgment came as a result of fruitful negotiations between the parties, pursuant to this court's encouragement that the parties resolve the matter. Thereafter the parties went about their own ways with their legal representatives having expressed appreciation to this court for its efforts in encouraging the parties to resolve the matter. The present application for leave to appeal was filed by the applicant on 16 July 2025.

Background

3. Perhaps, prior to interrogating the applicant's grounds for leave to appeal, it may be useful to spend some time looking into the background of this matter. On 25 July 2024, the respondent, being the landlord, Tripoint Property

Development (Pty) Ltd, (Tripoint) filed papers seeking, *inter alia*, cancellation of the lease agreement between the parties and eviction of the applicant and any other party occupying the premises described as 1[...] M[...] Road, Plot 9[...] M[...], Centurion, Gauteng (the premises). At that point, it was contented in the papers that the applicant owed arrear rental in the region of R 681 069, 00¹.

4. The record suggests that the applicant filed a notice to oppose the application but failed to file answering papers. In the fullness of time, the matter was set down for 28 May 2025 in the unopposed court and a notice of set down was served in January 2025, via email, upon the applicant's then legal representatives, Kanyoka Inc Attorneys. On 28 May 2025, this court, per Nyathi J, issued an order authorising, *inter alia*, the eviction of the applicant from the premises including any other party occupying the premises, on or before 30 June 2025. The court further granted costs on the scale as between attorney and client. The order, according to the respondent, was served by the Sheriff on 23 June 2025, following delay in uploading the signed order and further delay at the Sheriff's offices.
5. On Thursday, 26 June 2025, at about 14h10, by way of extreme urgency, the applicant filed papers in the Urgent Court seeking audience on 27 June at 10h00 or soon thereafter. The relief sought was by way of part A and part B with part A directed at securing an interdict, in terms of 'Uniform Rule 45A, pending determination of part B to interdict the respondents from executing a WRIT of Execution issued out of this court on 28 May'. Part B envisaged rescission of the order of 28 May. Needless to say, there was and is no such WRIT as referred to in the applicant's papers. All that existed by then was the order granted by this court on 28 May.
6. The respondent opposed the application pointing, *inter alia*, to the absence of a case for the extreme urgency, given the protracted course the matter had

¹ Cents have been omitted.

taken and the patent absence of a cogent defence to its claim. In its answering papers, the respondent canvassed the arduous route it had walked to accommodate the applicant, notwithstanding its repeated breaches of the lease agreement in paying rentals. The respondent denounced the claims of novation raised by the applicant, pointing to the trite legal position of assumption against novation *National Health Laboratory Service v Mariana Lloyd- Jansen van Vuuren*².

7. Having carefully considered the papers, and noted the clear absence of a defence to the respondent's claim, the case to justify the urgency, much less the extreme urgency with which the applicant approached the court, given the protracted background, in the spirit of effective and equitable resolution of the matter, this court, at the outset, encouraged the parties to resolve the matter. Contrary to the applicant's adopted approach in its notice of application for leave to appeal, the court made no findings in the matter other than direct that the parties discuss the matter with a view to accommodating one another. Consequently, the matter stood down to allow deliberations between the parties both of whom were legally represented. Although the parties came back to court indicating that they could not agree the actual date of vacating the premises, there was no longer mention of the applicant pursuing the relief it had initially approached the court for. There was neither a claim nor case made by the applicant of entitlement to remain in the premises until its rescission was completed.

8. Importantly, in the spirit of assisting the parties to resolve the matter, this court did not require of the applicant to discharge the obligation placed upon it in terms of Uniform Rule 6 (12) to demonstrate why the matter is extremely urgent and why it claims it cannot obtain substantial relief in due course, given the history canvassed in the papers by the respondent, with reference to the *Plascon Evans* rule. It is trite that the procedure set out in Rule 6(12) is not to be had by the asking and that a party is required to make a case for it, *East*

² (20044/2014) [2015] ZASCA 20 (19 March 2015), paragraph 15.

*Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*³. With the intervention of the court, an order was issued authorising the suspension of the order of 28 May until 20 July 2025 to allow the applicant to seek alternate accommodation for its operations and exit the premises. Instead of vacating the premises on 20 July, the applicant, on 16 July, filed the present application seeking leave to appeal the order of 27 June 2025.

Applicant's grounds of appeal

9. The applicant's grounds for leave to appeal are set out in its Notice of Application for leave to appeal. The applicant contends that:

(i) This court erred in authorising its eviction and extending the date thereof to 20 July 2025 which is a date prior to finalisation of Part B of the Applicant's application for rescission of the eviction order granted in default. The applicant further adds that while it was rightfully acknowledged that the eviction could not justifiably be carried out as per the initial eviction order, the court should have granted the application for stay of eviction pending the finalisation of the rescission application for Part B of the application.

(ii) Having correctly identified that the eviction order could not justifiably be carried out, the court erred fundamentally in granting the order to the effect of varying same in the absence of a substantive application for variation of the order in circumstances where the court was neither sitting as a court of appeal nor review court. The court had no jurisdiction to vary the order of another judge absent a substantive application to that effect. The court should have merely restricted itself to the powers reposed to it under Uniform Rule 45A, to stay execution pending a specified event, *viz*, finalisation of Part B of the application.

Applicable legal principles

10. It is trite that an applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of

³ (11/33767) [2011] ZAGPJHC 196 (23 September 2011), paragraph 6.

success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough *MEC for Health, Eastern Cape v Mkhitha and Another*⁴. Where the court is not persuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal but here too, ‘merits remain vitally important and are often decisive’ *Ramakatsa and Others v African National Congress and Another*⁵. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.

Analysis

11. The applicant came to court seeking an ‘interdict in terms of Rule 45A’ to interdict the respondents from executing a WRIT that did not exist at the time. Having considered the matter and in the interests of equitable and effective resolution of the matter, this court, of its own accord, encouraged the parties to resolve the matter on their own. This court exercised its discretion in its approach in resolving the matter purely to assist the applicant as the order was served late following delays. The court did not have to do so but in the interest of resolving the matter effectively and equitably, it came to the applicant’s assistance. In so doing, the applicant was relieved of the burden of establishing not only the urgency but the case for the substantive relief it sought. It now claims that the court had found that the order of 28 May could not justifiably be enforced, a finding that was never made by this court as the order came through the spirit of co-operation amongst the parties.

12. The applicant further raises claims of this court acting as a review or appeal court over the order of 28 May. Nothing of the sort occurred. Simply, the entire pursuit of the application is an abuse of the court’s process. The court made no findings in the matter and the resultant order was a product of the parties’ cooperation assisted by this court and on this basis alone leave to appeal must be refused.

⁴ 1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 17.

⁵ (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021), paragraph 10.

13. Even if one were to charitably enquire into the applicant's grounds for leave to appeal, the applicant makes no case whatsoever why another court would come to its aid when its application disclosed no defence to Tripoint's case. The applicant made unsubstantiated claims about the order of 28 May being susceptible to rescission in terms of Rule 42 without ever making a case for such rescission. The applicant never once denied that it owed substantial monies by way of arrear rentals to Tripoint nor did it provide proof of payment. It simply went about its case making vacuous claims that Tripoint had obtained the order of 28 May in a furtive and surreptitious manner, referring to an order obtained following a proper notice of set down. Under the circumstances, leave to appeal cannot be granted and the application stands to be dismissed with costs. The respondent implored the court for a punitive costs order. Such a cost order is warranted given the circumstances of this case.

Order

1. The application for leave to appeal is dismissed with costs on a scale as between attorney and client.

**N.N BAM J
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION,
PRETORIA**

Date of Hearing: 25 September 2025

Date of Judgment: 26 September 2025

Appearances:

For the Applicant: *In person*

Counsel for the Respondent: Adv C Barreiro

Instructed by:

Jaco Mulder Attorneys
East-Lynne, Pretoria