



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**  
**CASE NO: 4851/2022**

In the matter between:

**REDEFINE PROPERTIES LIMITED**

Plaintiff

and

**MASIQHAME TRADING 224 CC t.a. TNT PROJECTS**

First Defendant

**THOZAMA NANCY TONGO**

Second Defendant

**Coram: JONKER AJ**

**Heard: 14 October 2025**

**Delivered: Electronically on 17 October 2025**

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**ORDER**

1. The application for leave to appeal is refused.
  2. The applicants are directed to pay the party and party costs, including costs of counsel on scale A, jointly and severally, the one paying the other to be absolved
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**JONKER AJ:**

## **Introduction**

[1] This is an application for leave to appeal against the whole of the judgment and order delivered on 22 August 2025. The order set aside the defendants amended plea and counterclaim, filed on 13 December 2024, in terms of rule 30. It also directed the defendants to deliver their amended plea and counterclaim, strictly in accordance with the amendments set out in their rule 28(4) notices dated 28 June 2024, within five (5) days of the order.

[2] The applicants (defendants in the main action) seek leave to appeal that order to the Full Bench of this Division, alternatively to the Supreme Court of Appeal.

[3] The grounds of appeal are set out in detail in the notice of application for leave to appeal. In summary, the applicants contend that the Court erred both in its findings of fact and in its rulings of law, and that the intended appeal would have practical effect and has prospects of success. The applicants representative at the hearing of the application stood by the application and sought not to highlight any issue, even when invited by the court to do so.

[4] The application was opposed by the respondent (the plaintiff in the main action), who filed written submissions in support of the judgment and in opposition to the application for leave to appeal.

[5] The main thrust of the opposition is that the order of the Court is not appealable as it does not have a final and definite effect of the main action.

## APPEALABILITY OF THE ORDER

[6] Before a court can determine whether leave to appeal must be granted, it must be clear that the Court order sought to be appealed is final in effect. For it to have final effect, a court order must bring finality to the dispute or part of it, to which it applies.<sup>1</sup>

[7] The appellate division in *Zweni*<sup>2</sup> dealt extensively with the issue of appealability of interim orders and laid down a set of criteria to determine whether an order is appealable. The court held that for an order to be appealable, it must meet the following requirements: (1) The decision must be final in effect and not open to alteration by the court of first instance; (2) It must be definitive of the rights of the parties; (3) It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[8] The principles in *Zweni* were also dealt with in a line of authorities after its decision.

[9] The order granted by the court in terms of rule 30, does not meet the *Zweni* requirements. It is not final in effect as it is incidental to the pending proceedings without determining the main issue in the action.

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<sup>1</sup> *Eke v Parsons* [2015] ZACC 30; 2016 (3) SA 37 (CC) at para 73.

<sup>2</sup> *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A).

[10] In *Afrocentrics*<sup>3</sup>, the Constitutional Court dealt with an application or leave to appeal a rule 30 order, which was found to be final in effect, as the order granted set aside the applicant's main application.

[11] Kollapen J posed certain questions to determine the appealability of the order as follows:

*“What does the High Court order in these proceedings say to the parties? It is ambiguous and incomplete. It simply says the proceedings are irregular. But having done so, fails to say whether they are set aside, whether the party in default is given leave to amend or what is meant to happen following the finding of irregularity. The parties are left in a state of uncertainty regarding the status of the matter. Therefore, it is clear that the High Court did not make an order in the terms that rule 30 contemplates. A proper determination of the rule 30 application is required and, in the circumstances the proper remedy is to refer the matter to the High Court for it to consider the rule 30 application de novo.”*

[12] The questions posed above assists to determine whether the order here, is appealable. The effect of the order has to be determined by what it ultimately says to the parties.

[13] The court set aside an amendment made by the applicants as irregular, and ordered the applicants to affect an amendment in accordance with the rule 28(4) notice, as filed, as this was the version that applicants were granted leave to affect. The order does not dispose of the main relief, and it most definitely does not bar the

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<sup>3</sup> *Afrocentrics Projects and Services (Pty) Ltd t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Ltd and Others* (CCT 54/22) [2023] ZACC at para 30.

applicants from seeking another amendment. It is not definitive of the applicants rights. The applicants are required to follow the proper procedure as set out in the uniform rules.

[14] The order is not appealable. However, even if is, there is no reasonable prospects of success as contemplated in section 17(1)(a) of the Superior Courts Act 10 of 2013 (SC Act).

### **THE TEST FOR LEAVE TO APPEAL**

[15] It is trite that section 17(1)(a) of the SC Act provides that leave to appeal may only be granted on two grounds:

*“(1) Leave to appeal may only be given 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, including conflicting judgments on the matter under consideration”.*

[16] In *Ramakatsa*<sup>4</sup>, the Supreme Court of Appeal set out the proper approach to the test for leave to appeal in terms of section 17(1)(a) as follows:

*“Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling*

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<sup>4</sup> *Ramakatsa v African National Congress* [2021] ZASCA 31 at para 10.

*reasons which exist why the appeal should be heard such as the interests of justice.”*  
*for the conclusion that there are prospects of success must be shown to exist.”*

[17] In *Mkhitha*<sup>5</sup> the Supreme Court of Appeal held that leave to appeal, especially to that court must not be granted unless there truly is a reasonable prospect of success. The court noted in this judgement that the SC Act makes it clear that leave to appeal may only be granted where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why it should be heard. The court noted that a mere possibility of success; an arguable case or one that is not hopeless is not enough. There must be a sound rational basis to conclude that there is a reasonable prospect of success on appeal.

### **Applying the legal principles to the application for leave to appeal**

#### **The first ground: Erroneous findings of fact**

[18] The applicants submit that this Court erred in finding that the amended plea and counterclaim filed on 13 December 2024 deviated materially from the terms of the rule 28(1) notice and the order of court granted on 2 December 2024. It is contended that there was no “different version” before Court when leave to amend was granted, and that the Court’s finding to that effect was erroneous and led to an incorrect conclusion.

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<sup>5</sup> *MEC for Health, Eastern Cape v Mkhitha*, unreported, SCA case no 1221/2015 dated 25 November 2016.

[19] The applicants contend that there was no limitation imposed on the scope of the amendment authorised by the order of 2 December 2024, and that no new material was introduced beyond that contemplated in the notice of amendment.

[20] I am not persuaded that this criticism has any merit. Although the applicants' attorney was invited to elaborate on the alleged incorrect factual findings, counsel merely referred the court to the notice of application for leave to appeal and declined to make any further submissions.

[21] The record demonstrates that the amendments ultimately effected differed in several material respects from those proposed in the original notice, and that additional matter, including a new counterclaim of R30 million, was introduced. These discrepancies were detailed in paragraphs 28 to 32 of the judgment. The applicants' did not dispute these differences in their answering affidavit or in argument.

[22] The amendment going beyond the scope of the authorised amendment is supported by the record.

[23] The applicants' submission that there was no limitation or scope to the amendment granted by the court when leave was granted is without merit. The court granted leave to amend in accordance with the notice filed in terms of Rule 28(1). It did not authorise any amendment beyond that. The further matter (which included the additional counterclaim) imported into the effected amendment, was never contained in the rule 28(1) or before the court that granted leave to amend in terms of rule 28(4). The court granted leave to amend that which the applicants' sought in its rule 28(4) notice, nothing else.

### **The second ground: Erroneous rulings of law**

[24] The applicants' contend that the Court erred in ruling that the respondent was entitled to proceed under rule 30 rather than rule 30A, and that the respondent's rule 30 application was not a nullity.

[25] This ground too is without merit. The distinction between rule 30 and rule 30A was dealt with extensively in the judgment. The reasoning and conclusion reached on this point are consistent with authorities as referred to in the court's judgment.

[26] There is no reasonable prospect that another court would reach a different conclusion.

### **The third ground: Practical effect**

[27] The applicants' argue that the intended appeal would have a practical effect, as a successful appeal would permit them to retain their amended plea and counterclaim and avoid any prejudice arising from allegations of prescription. The amended plea and counterclaim was not authorised by the court when leave was granted in accordance with rule 28(8). The applicants' are not permitted to effect an amendment in this manner.

[28] While it is accepted that an appeal may have some practical effect, this consideration alone cannot warrant the granting of leave where no reasonable



prospects of success on the merits exist. The test remains whether there are reasonable prospects that another court would come to a different conclusion.

[29] I am not persuaded that such prospects exist. The order made are supported by both fact and law.

## **CONCLUSION**

[30] Having considered the application for leave to appeal, the grounds advanced, and the submissions filed by the plaintiff, I am not satisfied that the order made is appealable, and in any event, that there are reasonable prospects that another court would reach a different conclusion, nor that the appeal would serve any material purpose beyond revisiting issues already fully ventilated and decided.

## **COSTS**

[31] The applicants advanced no new argument on costs beyond that already dealt with in the main judgment. There is no reason to deviate from the principle that costs normally follow the event and the applicants are therefore ordered to pay the cost of the application.

## **ORDER**

1. The application for leave to appeal is refused.

2. The applicants are directed to pay the party and party costs, including costs of counsel on scale A, jointly and severally, the one paying the other to be absolved.

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**E JONKER**

**Acting Judge of the High Court**

Appearances:

For applicant: Mr Sharuh

For respondent: Adv C Quinn