



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

Case no: 2025-070166

In the matter between:

PRIME AFRICAN SECURITY (PTY) LTD

Applicant

And

ESKOM HOLDINGS SOC LTD

First Respondent

EDEN SECURITY SERVICES CC

Second Respondent

ENSEMBLE SECURITY SERVICES CC

Third Respondent

**INRANITE SECURITY (PTY) LTD
Respondent**

Fourth

TDP ENTERPRISE (PTY) LTD

Fifth Respondent

Heard : 02 September 2025

Delivered : 20 October 2025

Summary : Leave to appeal - leave to appeal will be granted only where the appeal would have a real prospect of success or there are compelling reasons to grant leave. - Courts do not to grant applications for leave to appeal as a matter of course merely because a litigant is of the view that the findings or conclusions of the court are incorrect.

ORDER

Leave to appeal dismissed with costs.

JUDGMENT DELIVERED ELECTRONICALLY

Nziweni, J

Introduction

[1] This is an application for leave to appeal against the whole judgment and orders that this Court handed down on 25 July 2025. The application is resisted by the first and the second respondents.

[2] During the applicant's oral submissions, the applicant contended that this Court erred on several grounds to dismiss its main application. The errors that the applicant believes were made by this Court in the main judgment are fully set out in the notice for leave to appeal.

The grounds of appeal

[3] The notice for leave to appeal reveals the following grounds upon which the applicant avers that I erred:

a) in concluding that the applicant did not seek to enforce the 2024 order;

- b) in concluding that applicant cannot be heard to say in one and the same breath that Eskom is in contempt but does not seek an enforcement of the 2024 order;
- c) in concluding that the declaratory order sought by the applicant won't be binding on Eskom;
- d) in concluding that Eskom offered proof in its papers that indicate that compliance with the 2024 order was clearly impossible;
- e) in concluding that the matter had no constitutional dimension;
- f) in concluding that the interim order sought by the applicant would hinder a court order from being effective;
- g) in concluding that there is no decision that Eskom has made as far as procurement process is concerned;
- h) in concluding that the interim interdict sought was against the 2024 order when it was in fact against Eskom's decision;
- i) in concluding that Eskom offered proof in its papers that demonstrate that compliance with the 2024 order was impossible;
- j) in concluding that the application maliciously used court process for ulterior motives;
- k) in dealing with the consequential just and equitable remedy sought by the applicant as an ordinary application to amend;
- l) in not granting the consequential just and equitable remedy;
- m) in failing to deal with the question of whether Eskom's conduct of failing to comply with the order was unconstitutional;
- n) in finding that the applicant is trying to change the terms of the 2024 order in a way that will only be beneficial to it. According to the applicant, this has led to this Court mischaracterising the case, as such the applicant did not get a fair hearing;
- o) in finding that the applicant satisfied the requirements for the interim interdict sought;
- p) in not finding that the applicant did not have to prove that Eskom was in wilful default of the 2024 order for purposes of the declaratory order and in not finding that Eskom's conduct was unconstitutional;
- q) in finding that the applicant seeks a reconsideration of the 2024 order;
- r) in not finding that:
 - a) that Eskom wilfully, intentionally and deliberately failed to comply with the 2024 order;

- b) the applicant has a constitutional right to a fair tender process;
 - c) that the applicant has a constitutional right to participate in state tender process;
 - d) the applicant has a right to be invited to participate in state tender processes;
 - e) the applicant's aforesaid rights required protection pending the final determination of Part B of the application;
- s) The applicant also relied on the grounds that there are compelling reasons why the leave to appeal should be granted.

Discussion

[4] The law and the approach applicable in considering applications for leave to appeal against a judgment and an order are now settled. Our precedents make clear that leave to appeal should be granted if there are realistic prospects of successfully overturning a decision that a court has made or that there are compelling reasons to grant same. In other words, if the application for leave to appeal is wholly unmeritorious, then leave to appeal should be refused.

[5] The grounds of appeal took 10 pages of the notice of application for leave to appeal. As it can be immediately seen from the grounds of appeal; the applicant intends to appeal almost every finding and conclusion that was made by this Court.

(a) The applicant did not seek to enforce the order

[6] I have dealt at some length on this point in the main judgment; thus, I do not intend to burden this judgment with what I already canvassed.

[7] Insofar as is relevant to the present discussion, in relations to the finding that the applicant did not seek to enforce the order, I dealt with the issue from paragraph 43-45 of the main judgment.

[8] It is so that the notice of motion states the following:

“4. To give effect to the 2024 order and consequent upon the declaration of contempt and unconstitutionality in paragraph 2 and 3 above, paragraph 3 of the 2024 order is amended to read as follows . . .

5. The First Respondent is ordered to comply with paragraph 4 and 5 of the 2024 order and to commence a new open tender process contemplated therein within 4 months from the date on which this order is granted.” [If you want this to be done why do you say there is a decision]

[9] According to the applicant, the supposed contempt led to a material change in circumstances and new challenges that warrant an amendment to the 2024 order to enforce it. The applicant further asserts that in the circumstances of this case, the proposed amendment would be a just and equitable remedy.

[10] The applicant contends that considering that the time for complying with the 2024 order had already passed, it was necessary for this Court to fashion an order which would best give effect to it as opposed to simply granting an order declaring that Eskom was in contempt. The amendment would only give effect to the 2024 order if it ensures the original order is properly implemented.

[11] It is so that an amendment may be sought to enforce an original order. However, the court has to be satisfied that the amendment is not sought to advance the interests of the amending party, and that the amendment is sought with genuine intentions.

[12] Assuming that applicant is correct in contending that the first respondent committed a contempt and that the contempt created an unforeseen issue to the 2024 order; then it was the duty of the applicant, if it wanted to fill or address a void, to take appropriate proceedings for an amendment of the 2024 order, in terms of Rule 42. In fact, in the main judgment, it was my firm view that the applicant significantly oversimplified the requirements to amend a court order, by failing to take into account the rule and the procedure applicable to amend a court order.

[13] A relief that is sought does not always speak clearly for itself and it is not at all uncommon to find that it is not possible to appreciate its true nature without a clear

understanding of the context in which it was created. Over and above the amendment sought by the applicant, must be viewed in the context of other reliefs that are sought in the notice of motion.

[14] The amendment proposed simply wants Eskom to commence with the new open tender process and to suspend the cancellation of the contracts, that was ordered by the 2024 order. The amendment that is sought by the applicant was never the intended outcome of the 2024 order. On top of that or perhaps more importantly, in paragraph 6 of the notice of motion the applicant seeks that Eskom be interdicted from taking any further steps in the implementation of the emergency procurement process and from terminating the applicant's contract.

[15] In essence, based on the totality of circumstances of the reliefs that are sought in the notice of motion, it cannot be said that the amendment that is sought by the applicant, is carved out of the 2024 order. It is a radical departure from what was originally decided upon. The amendment does not seek to supplement the 2024 order. Surely, paragraph 4 of the notice of motion seeks to create a new term. The changes that are sought by the applicant fundamentally breaks with the 2024 court order's core identity.

[16] The amendment that is sought by the applicant, seeks to treat clauses 1-3 [of the 2024 order], as if they never existed. In this scenario, I found in the main judgment that the implication of the amendment desired by the applicant would be to supersede the 2024 order. Hence, I found that the amendability of the 2024 order was not possible in the circumstances of the case at hand.

[17] The 2024 order was intended by Judge Thulare to be the order. In other words, Judge Thulare decided the character of the order. Thus, an amendment would not be a rendition of the 2024 order, as contemplated by Judge Thulare. As such, the fashion in which the amendment is sought, would lead to unintended consequences. Stated simply, the amendment sought would be to displace the essence of the 2024 order. It would go against the original purpose of the 2024 order. In effect the sought amendment would create a new order and not just the modification of the 2024 order.

[18] *Whittaker v Roos and Anor* 1911 TPD 1092 the court stated that:

“This court has the greatest latitude in granting amendments, and it is very necessary that it should have. The object of the court is to do justice between the parties. It is not a game we are playing; in which if some mistake is made the forfeit is claimed. We are here for the purpose of seeing that we have a true account of what actually took place, and we are not going to give a decision upon what we know to be wrong facts.”

[19] Additionally, the amendment would be implementing a change only desired by the applicant. The amendment would be to the benefit of the applicant as it also seeks to suspend the cancellation of the contracts. Hence, I held the view that the applicant is seeking to use an amendment to achieve something else.

[20] In the circumstances, I cannot be blamed, for finding that the applicant is merely seeking an unfair advantage through the amendment and under the guise of just and equitable remedy. Particularly, if the amendment is viewed in light of the all the reliefs that are sought by the applicant. Thus, it is somewhat surprising that the applicant persists that the amendment sought is intended to give effect or act as the enforcement of the 2024 order. More importantly however, in this case, it is actually a misnomer to say that the applicant seeks an enforcement of the 2024 order, through the amendment.

[21] If the applicant truly desires to enforce the 2024 order, it begs a question as to why [the applicant] seeks to interdict Eskom from executing certain parts in the 2024 order. When faced with a contemptuous conduct, a court may enforce its order either by forcing a party to act or punishing the party. A party cannot manipulate the Constitution to amend an order of court. Perhaps most significantly, although the applicant seeks to rely on the Constitution to achieve the amendment, this does not help its cause. In *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* (CCT19/11) [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (7 May 2015) at para 37, the Constitutional Court stated the following:

“However, where a court finds a recalcitrant litigant to be possessed of malice on balance, civil contempt remedies other than committal may still be employed. These include any remedy that would ensure compliance such as declaratory relief, a mandamus demanding the contemnor to behave in a s declaratory relief, a mandamus demanding the contemnor to behave in a particular manner, a fine ad any further order that would have effect of coercing compliance.”

[22] As mentioned earlier on, in the circumstances of this case, there was no way that the amendment sought would serve to enforce the 2024 order. When considering the prospects of the applicant being successful in an appeal against this issue, one must remind oneself of the fact that the amendment sought does not even allow the contemnor to purge the contempt. Equally, the amendment does not seek future compliance with the 2024 order. The relief sought [the amendment] does not have the effect of coercing compliance, but rather, of amending the 2024 order and suspending certain portions thereof. Though Eskom was out of compliance with the 2024 order at the time this application was heard, that did not imply that a ‘contemptuous conduct’ was no longer capable of remedy, in terms of the 2024 order.

[23] But even if I am wrong in respect to what I have stated above, in a contempt of court hearing before the court establishes that there should be enforcement of the order, there should be a finding of contempt first.

(b) Not granting the consequential just and equitable remedy and failure to deal with the question of whether Eskom’s conduct of failing to comply with the order was unconstitutional.

[24] Firstly, the applicant asserts that this Court dealt with the consequential just and equitable remedy as an ordinary application to amend. It is not clear on what basis the applicant suggests this. Though amendments may vary in degrees depending on the context; an amendment remains an amendment. It [an amendment] simply involves a formal modification of an existing document.

[25] Turning to the issue of not granting the consequential remedy. In the context of civil contempt proceedings, before, the applicant gets to the just and equitability order, it should first overcome the hurdle of contempt. Simply put, contempt precedes the determination of whether a further remedy is "just and equitable."

[26] More importantly, even in terms of the notice of motion, the amendment that the applicant seeks is consequent upon the declaration of contempt. Thus, this Court could not venture into a just and equitability order before it declares Eskom to be in contempt.

(c) Whether the expiration of the deadlines in the 2024 court order renders the order invalid?

[27] This issue was vehemently argued by the applicant's counsel during the hearing of this application. It is so that there was undue delay on Eskom's part.

[28] It is a well-known fact that much depends upon context. Non-compliance with court-ordered timelines does not invalidate the order itself. The applicant wanted this Court to treat the timeline as set out in the Thulare order as imperative.

[29] Surely, the court must still determine whether in the context, the breach of the timeline led to a nullity of the order. To that end, though the 2024 order fixed the time within which paragraphs 1-3 [of the order] had to be complied with, that does not mean that non-compliance with the ordered timelines nullifies those parts of the order that had a fixed timeline.

[30] The thrust of Mr Tsatsawane's argument, in relations to the expired timelines, was that, after the deadline, there is no authorisation and if you do not meet the deadline, you should go back to court. Consequently, applicant's counsel continues, after the expiration of the deadline, there was no court order authorising Eskom to proceed. It was further argued on applicant's behalf that the life of the 2024 order is time based.

[31] For the above propositions, Mr Tsatsawane SC, relied heavily on the decision of *Meadow Glen Home Owners Association and Others v City of Tshwane Metropolitan Municipality and Another* (767/2013) [2014] ZASCA 209; [2015] 1 All SA 299 (SCA); 2015 (2) SA 413 (SCA) (1 December 2014). Mr Tsatsawane SC suggested that *Meadow* is an authority for the proposition that, when time specified orders expire before execution thereof, a party should go to court for an extension of time.

[32] Mr Tatsawane SC further submitted that this Court in its main judgment went against the case of *Meadow*. In the case of *Meadow* the following is stated at paragraph 8:

“[8] Having said that, the Municipality consented to the court making an order in those general terms. That obliged it to make serious good faith endeavours to comply with it. That is what we are entitled to expect from our public bodies. If they experienced difficulty in doing so then they should have returned to court seeking a relaxation of its terms. If there was a dispute between them and the appellants regarding the scope of the order and what needed to be done to comply with it, it was not appropriate for the Municipality to wait until the appellants came to court complaining of non-compliance in contempt proceedings. It should have taken the initiative and sought clarification from the court. Its failure over a protracted period to take these steps is to be deprecated.” (Own emphasis and footnotes omitted.)

[33] On the other hand, Mr Oosthuizen SC, argued that the *Meadow* case has no application in this matter. He further argued that in *Meadow*, it is not stated that if a party does not return for an extension, then everything they do needs to be treated as non-existent. It seems to me that the point made by Eskom’s counsel is a good one. I agree that the *Meadow* case is readily distinguishable from the present case. As a matter of fact, the *Meadow* case did not deal with expired deadlines.

[34] There is another distinguishing factor, *Meadow* does not state that after the expiration of the date there is no authorisation. The long and the short of it is, the *Meadow* case is not on point with this matter. Insofar as is relevant to the present

discussion, the *Meadow* matter also dealt with contempt of court, however it does not support the assertions made by the applicant.

[35] Obviously, I had to look at the object of the timeline in the Thulare J order. The history of the Thulare J order is quite important. It was common cause in this matter that the 2024 order was obtained at the instance of Eskom and the second respondent. It is also important to note that the applicant did not oppose the 2024 order that was sought by Eskom and the second respondent. Hence, it begs the question as to how the applicant is prejudiced by the non-compliance with the timeline by Eskom.

[36] Unfortunately, there are more than few problems associated with the argument proffered by the applicant as far as expiration of deadlines that were set out in the order by Thulare J are concerned.

[37] There is no hard and fast rule that state that time specific orders become automatically invalid when the set-out deadline expires. Finally, and perhaps most importantly, unlike in a contract situation where the contract automatically becomes null and void if a deadline is not met within the set timeframe. But the same is not true as far as court orders are concerned.

[38] The established principle insists that a court order remains valid until set aside. I think that the principle necessitates as a corollary that, even invalid orders remain legally effective until set aside. What is more, an order with an expired deadline is valid unless set aside. Thus, failure to extend the time limit does not lead to the order being void. Likewise, an invalid order is effective unless and until challenged in legal proceedings and set aside.

[39] It would really be a self-defeating exercise to hold that failure to comply with a timeline embodied in a court order render that order invalid. Obviously, the Thulare J order set out the timeline in the order to ensure that decisions related to paragraphs 1, 2, and 6 are made and implemented within the stipulated timeframe. As a result, the order set out timelines to ensure that compliance occurs in a timely manner. In addition, it is my view that the timeline did not concern the essence of the thing to be done, but are given with a view to the proper, orderly and swift conduct of the procurement process. Indeed, it was in this vein that, as I have previously observed,

non-compliance with a court order may lead to contempt; but non-compliance with court ordered deadlines does not invalidate an order.

[40] Plainly, a combination of factors can affect the execution time of an order. I had already mentioned in the main judgment that Eskom did not choose to flagrantly disregard the timelines in the order. I also found in the main judgment that, it cannot be said that Eskom failed to satisfactorily explain the delay of more than 7 months between the granting of the 2024 order and hearing of the main application. The applicant, in this regard, argued and gave evidence, through affidavits. The notice of the leave to appeal does not elucidate as to why I erred in these above mentioned factual findings.

[41] The assertion that when a set deadline expires without compliance with a court order, that clause of the order becomes automatically ineffective or invalid, cannot be sustained. What emerges from this argument is that the moment the deadline lapses, the order with an expired deadline can be disregarded as it has become automatically ineffective. Hence, the applicant amongst others, states that it wants an amendment to make the 2024 order effective. This argument would lead to legal uncertainty and chaos.

[42] Expiration of a deadline in a court order foreshadows a valid legal process. Thus, I stated in paragraph 78 of the main judgment that the relief sought by the applicant was a quantum leap.

[43] Clause 6 of the 2024 order, even if its timeline had lapsed cannot be disregarded without recourse to court. In such circumstances, before the time specific orders that have lapsed could be disregarded, there should be a process to pronounce on its validity. In other words, the court should first make a finding that a clause is no longer effective. This is particularly true with regard to certainty in the administration of justice, protection of parties' interests and rights, predictability as well as avoidance of a legal chaos.

[44] A party cannot simply place greater emphasis upon the expiration of a deadline. For that matter, the great hurdle that faced the applicant in this application was that it

was never the prayer of the applicant to have the terms of the time specified orders that had expired to be declared invalid because of non-compliance with the deadline.

[45] I do not think that by any stretch of imagination, it can be assumed that the setting of the deadlines in the Thulare J order suggests that part of the order would expire when those deadlines lapsed. I am the first one to admit that missing a deadline specified in a court order can have far greater consequences for the litigant that breached the deadline. Indeed, breach of a deadline in an order, is a breach of a court order and may lead to a litigant being found guilty of contempt.

[46] Unfortunately, in many cases than not, litigants fail to comply with timeframes stipulated in court orders. It is indeed that litigants cannot disregard an order of court as they desire. Breaches of a court order are egregious. However, as indicated above, that does not render the court order automatically invalid.

[47] In fact, the timeline is merely directory, to be fully obeyed as far as it is possible. Hence, it is significant to ascertain as to whether the failure was deliberate and wilful. This is exactly what I did in the main judgment in paragraphs 47-60.

[48] It is so that in paragraph 59 of the main judgment, I did inter alia, find that gleaning from Eskom's papers, it becomes clear that it is the stance of Eskom that they have substantially and meaningfully complied with the 2024 order. To this end, I was satisfied that Eskom had acted diligently to comply with its obligations under the 2024 order. I also indicated that the assertions made on Eskom's behalf were not challenged.

(d) No decision made

[49] The mere fact that the applicant asserts that Eskom should be ordered to comply with paragraphs 4 and 5 of the 2024 order and to commence a new open tender process as contemplated in the order; evinces on the applicant's own version that, insofar as this procurement is concerned, Eskom did not take a decision. Likewise, in respect of the emergency procurement, as I have already stated in the main judgment that it was the court that ordered the commencement of the emergency procurement. It was not the decision of Eskom, but the order of court.

Hence, the court was seized with an application for contempt. Before this Court, there was no evidence to demonstrate that Eskom took a decision that may be susceptible of being reviewed and reversed by a court.

(e) Constitutional issue

[50] Section 165 (5) of the Constitution states that an order or decision issued by a court binds all persons to whom and organs of state to which it applies. It is so that Eskom as an organ of State is enjoined to comply with court orders. Before this Court can find that Eskom breached its constitutional duty, I have to find first that Eskom is in contempt of court. In the circumstances of this case, that principle becomes relevant if and when Eskom is found to be in contempt of court.

[51] In this regard, the heart of the applicant's submission is that this Court erred in finding that Eskom's conduct was not contemptuous. Amongst others, the applicant contends given the fact that -Eskom's non - compliance was not in dispute and that in terms of the law non -Eskom's non - compliance constituted contempt and a violation of Eskom's obligation to comply with Court orders in terms of section 165; this Court erred in not granting the relief that the applicant asked for. This circuitous argument ignores the fact that the mere fact that non-compliance is not in dispute, does not necessarily make or establish contempt. Eskom never admitted that by not complying with the 2024 order constituted contempt of court.

[52] The mere fact that there is an allegation that Eskom is in contempt of court does not raise a constitutional issue. Put another way, in the circumstances of this case, section 165 would only be triggered if the alleged constitutional obligation that Eskom has supposedly failed to fulfil is proven. See *Zuma and Another v President of the Republic of South Africa and Others* (CCT 206/25) [2025] ZACC 21 (3 October 2025) at paragraph 25. I was thus not entirely persuaded that the applicant's submission that there was a constitutional dimension triggered in this matter, was well founded.

[53] Likewise, with the other grounds for leave to appeal, I find all of them to be unpersuasive. Essentially, the grounds to appeal are predicated on an assertion that

the judgment of this court was erroneous with reference to the bulk of the findings and conclusions made by it. The notice of leave to appeal was unduly prolix. As a result, to deal fully with all the grounds for leave to appeal would lead to an extremely lengthy decision, which in my view it is not necessary to do.

[54] I need not deal in detail with the other grounds as they lack merit. For instance, the applicant asserts that this Court erred in not finding that the applicant did not satisfy the requirements of the interim order. The applicant's assertions are no more than statements disagreeing with the decisions I made in the main judgment. This Court gets the distinct impression that the applicant simply wants to appeal merely because he does not agree with the decision of this Court and is of the opinion that the court was wrong. The applicant in my view seeks the leave to appeal so that the appellate court can reweigh the evidence.

(f) Conclusion

[55] It is important in this matter to emphasise once again that leave to appeal will be granted only where the appeal would have a real prospect of success or there are compelling reasons to grant leave. Courts do not grant applications for leave to appeal as a matter of course merely because a litigant is of the view that the findings or conclusions of the court are incorrect. In that light, I fail to discern any reason why leave should be granted. In addition, this case turns on the application of law to the facts. There is no question of public importance or such a nature or significance to warrant a decision by the Supreme Court of Appeal. In any event, it is worth noting that I also concluded in the main judgment that the matter was not urgent and this is something that is not challenged by the applicant in this application.

[56] In the result, I make the following order:

- (a) Leave to appeal dismissed with costs on scale C.
- (b) The costs will include the costs of employment of two counsels, where employed.

CN NZIWENI
JUDGE OF THE HIGH COURT

APPEARENCE

For the Applicant	:	Mr Tsatsawane SC
Attorneys	:	Dirk Kotze Attorney
For the First Respondent	:	Mr AC Oosthuizen SC Ms D Mokale
Attorneys	:	Rahman Incorporated
For the Second Respondent	:	Mr Walters
Attorneys	:	Mr X Hilita