



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-015672

- 1. Reportable: No
- 2. Of interest to other judges: No
- 3. Revised

[Redacted signature]

13 October 2025
WRIGHT J

In the matter between:

CULTIVAR INVESTMENTS (Pty) LTD

APPELLANT

and

SPECIAL INVESTIGATING UNIT

FIRST RESPONDENT

THE MINISTER OF THE DEPARTMENT OF AGRICULTURE,

LAND REFORM AND RURAL DEVELOPMENT

SECOND RESPONDENT

THE DIRECTOR-GENERAL: DEPARTMENT OF

AGRICULTURE, LAND REFORM AND

RURAL DEVELOPMENT

THIRD RESPONDENT

THE DEPARTMENT OF AGRICULTURE, LAND

REFORM AND RURAL DEVELOPMENT

FOURTH RESPONDENT

JUDGMENT – WRIGHT J

Introduction

1. The heading above is set out in the way the present application was launched.
Broadly speaking, and without making any finding, the above cited appellant, Cultivar obtained a thirty year lease with the above cited fourth respondent, the Department of Agriculture, Land Reform and Rural Development. That lease became the subject of proceedings before a Special Tribunal established in terms of section 2(1) of the Special Investigating Units and Special Tribunals Act 74 of 1996.
2. On 19 April 2023, Modiba J in her capacity as member of the Special Tribunal handed down judgment.
3. The learned judge made the following order:

“ 1. *The decision of the Minister of Rural Development and Land Reform to order the lease agreement referred to in (2) below is declared irregular and unlawful;*

2. *The lease agreement entered into between the Department of Rural Development and Land Reform and the first respondent dated 11 January 2019 is declared irregular and unlawful.*
3. *The Tribunal Registrar is directed to convene a case management meeting with the parties to determine the further conduct of the matter for the determination of the appropriate consequential remedy in terms of s4(1)(c) read with s8(2) of the SIU Act. “*
4. On 15 May 2023, Cultivar delivered a notice of appeal, to a Full Court “ *In the High Court of South Africa, Gauteng Local Division, Johannesburg “*. Under the notice, Cultivar seeks the upholding of the appeal and the setting aside of the order of Modiba J. Grounds of appeal are set out in some detail.
5. Cultivar did not seek leave to appeal.
6. Now, before me is an application under Uniform Rule 30 brought by the Special Investigating Unit in which it seeks orders that Cultivar’s notice of appeal be declared an irregular step and that it be set aside. Also sought is an order that the matter be remitted to the Special Tribunal in order to finalize the procedure envisaged in paragraph 3 of the order of Modiba J.

Legislation and Rules

7. Under section 8(7) of the Act “ *Any party may appeal against a ruling, decision or order of a Special Tribunal to the Provincial Division of the Supreme Court which has jurisdiction and such an appeal shall be deemed to be an appeal against a decision by a single judge of the Supreme Court: Provided that no*

appeal shall lie against any ruling, decision or order which, if made by the Supreme Court, would not be subject to appeal. “

8. The Rules for Special Tribunals were published on 25 August 2020 in Government Gazette 43647 under GN 449.
9. Rule 32(1) reads “ *Any party may appeal against a ruling, decision or order of the Tribunal, to the Provincial Division of the High Court which has jurisdiction in terms of section 8 (7) of the Special Investigating Units and Special Tribunals Act 74 of 1996 as amended. Such appeal shall be deemed to be an appeal to the Full Court of that Provincial Division.*”
10. Rule 32(2) reads “ *No appeal shall lie against any ruling, decision or order of the Tribunal which, if made by the High Court would not be subject to appeal.*”
11. The relevant part of Rule 32(3) reads “ *A party intending to appeal a judgment and order of the Tribunal shall first apply for leave to appeal...*”
12. Under Rule 32(10) “ *The provisions of Rule 49 of the Uniform Rules of the High Court relating to Civil Appeals to the Full Court shall apply mutatis mutandis to the appeal proceedings from the Tribunal. “*
13. Section 16(1)(a)(i) of the Superior Courts Act 10 of 2013 reads - “ *Subject to section 15 (1), the Constitution and any other law— (a) an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted — (i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of section 17(6) “ (My emphasis).*

14. Given the conclusion reached below, it is preferable that I do not deal further with these laws and their possible applicability.

Grounds under Uniform Rule 30

15. The SIU bases its application on two grounds.
16. Firstly, the order is as yet unappealable. It is alleged that the order would become appealable only after the remedy referred to in paragraph 3 of the order has been determined.
17. Cultivar suggests that this ground is bad in law. It says that a thirty lease has been held to be irregular and unlawful. This is alleged to be a finding final in effect. Cultivar's argument proceeds that even if under paragraph 3 of the order it were later to be held that the lease is not to be cancelled for whatever reason, and even if it were to be ordered that rent must be paid for the full term, the findings of irregularity and unlawfulness are discrete and determinative. The argument proceeds that the Tribunal seized with determining a remedy would need to take into account the judgment and order of Modiba J, unless set aside on appeal. The argument continues that the judgment and order, as decided by Modiba J or differently by a Full Court on appeal may well influence the determination of the remedy.
18. The second ground relied on by the SIU is that even if the order is appealable, leave to appeal is required. Cultivar argues that leave is not required. The arguments on this point are intricate and require a close consideration of the law.

Prejudice

19. The SIU alleges that it is prejudiced by the launching of the appeal without leave.

It says that it acts as the defender of proper administration of the affairs of state and as protector of the public purse. It says that even if Cultivar was not involved in any maladministration the lease falls to be cancelled. The SIU says that the appeal is a delaying tactic, causing the life of the lease to continue to the prejudice of proper administration and the public purse.

20. In Civil Procedure in the Superior Courts by Adv D Harms SC, the learned author writes, at B30.3 “ *When a party wishes to object to a notice given in terms of section 3 of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002, [7](#) rule 30 is not the appropriate mechanism. The appropriate course is either to object to the notice in terms of that Act, or to deliver a special plea. Rule 30 is not intended to serve as a basis for an objection to procedural irregularities in respect of other legislation.[8](#) It is meant to deal with irregular steps taken by parties during the course of litigation and where the irregularity emanated from the inappropriate use of the rules of court.[9](#)* “ Footnotes 7, 8 and 9 read “ 7 *Ntshingila and Others v Minister of Police 2012 (1) SA 392 (WCC)*. As to the meaning of “legal proceeding”: *Chetty t/a Nationwide Electrical v Hart NO and Another [2015] 4 All SA 401 (SCA)*. 8 *Cochrane v City Johannesburg 2011 (1) SA 553 (GSJ) at par [33]*. 9 *Ibid at par [31]* “

21. At B30.8 the learned author continues “ *In order to succeed with the application, the party who applies for the proceedings to be set aside has to suffer prejudice relating to the continuation of the litigation*”.[4](#) “ Footnote 4 reads “ *Pinro Building & Steel Merchants (Edms) Bpk v Yawa [2003] 1 All SA 318 (C); Concrete 2000*

(Pty) Ltd v Lorenzo Builders CC t/a Creative Designs and Others [2014] 2 All SA 81 (KZD) at [36]–[37]. “

22. It would thus appear that the present Rule 30 application may be an incorrect remedy.

23. I need not decide this latter point as, in any event, the SIU establishes no prejudice. The present application would appear to delay matters, thus exacerbating what the SIU says is prejudicial delay.

Other Considerations

24. Cultivar says that an application for leave to appeal would have been pointless as the Tribunal has repeatedly ruled that leave is not required and that the correct procedure is to appeal directly and as of right to a Full Court. It may be, and I make no finding thereon, that Cultivar's pessimism can't detract from a need to ask for leave if leave is otherwise required.

25. It is argued for Cultivar that a Full Court on appeal may itself consider its own jurisdiction to hear the appeal, including the question of whether or not leave is required and that it would be pointless now for a decision on appealability to be made which would not bind the Full Court. In my view, this argument is well made.

26. In addition, a Full Court will have in front of it the entire record of proceedings before Modiba J, which I do not have. The record may be of relevance to the questions of whether or not the order is final and whether or not leave is required.

I am not seized with either an appeal or with an application for leave to appeal but only with a narrow Rule 30 application.

27. A consequence of granting the application would be that I, sitting alone decide that a Full Court may not hear the appeal as it has no jurisdiction to do so. In my view, it would be preferable for a Full Court on appeal to decide this issue.

Costs

28. Cultivar seeks punitive costs. In my view, these are not warranted. The SIU reasonably raises interesting questions of law and procedure.

ORDER

1. The application is dismissed.
2. The first cited respondent, the Special Investigating Unit is to pay Cultivar's costs, including those of two counsel. Scale C applies.



GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 13 October 2025

DELIVERED : 13 October 2025

APPEARANCES :

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