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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case no: 3/2025

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

Circulate to Magistrates: YES / **NO**

In the matter between:

MABHEKANE TRADING CC

Applicant

and

**KOOPMANSFONTEIN COMMUNAL
PROPERTY ASSOCIATION**

First Respondent

**UNIDENTIFIED MEMBERS OF THE
KOOPMANSFONTEIN COMMUNAL
PROPERTY ASSOCIATION**

Second Respondent

Coram: MAMOSEBO J

Heard: 10/09/2025.

Delivered: 31/10/2025.

Summary: Application for leave to appeal – Reliance on s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – Whether the envisaged appeal has reasonable prospects of success – Whether the interests of justice warrant granting leave – Interim interdict initially granted but rule *nisi* discharged on the return date as requirements for a final interdict were not met – There is no merit for the appeal to be heard.

ORDER

1. The application for leave to appeal is dismissed with costs.
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JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

Mamosebo J

- [1] On 07 January 2025, Stanton J granted an interim interdict in favour of the applicant, Mabhekane Trading CC, in the form of a rule *nisi* calling upon the respondents, Koopmansfontein Communal Property Association and its unidentified members, to show cause on the specified return date why the interim interdict should not be made final.
- [2] On the return day, 07 February 2025, the matter was argued and the rule *nisi* issued out of this court on 07 January 2025 was discharged on 16 May 2025. The applicant seems to move from a premise that I ought to have ordered it to issue summons on a specific day, failing which, the respondent could approach the court for further relief. The argument is that, the failure to issue such an order, rendered the adjudication of that action moot, thereby shutting the door in the applicant's face to have its dispute adjudicated by a court.
- [3] The applicant now seeks leave to appeal to the Full Court of the Northern Cape Division, alternatively, to the Supreme Court of Appeal, against the whole of my order and judgment handed down on 16 May 2025. The applicant relies on section 17(1)(a)(i) of the Superior Courts

Act¹ and submits that its application would have reasonable prospects of success. The application is opposed only by the first respondent.

[4] This is what was contained in the Notice of Motion before Stanton J when the interim relief was sought on an urgent basis:

‘Kindly take notice that the applicant intends to approach this Honourable Court on Tuesday, 7 January 2025 at 14:00, or soon thereafter as counsel for the applicant may be heard for an order in the following terms:

1. That the applicant’s non-compliance with the form and service prescribed in the Uniform Rules of Court is condoned and the application is heard on an urgent basis.
2. That this order is returnable on 7 February 2025 to the unopposed motion court roll.
3. That pending a further order in the action proceedings contemplated by the applicant, a rule nisi is issued calling upon the respondents to show cause, if any, on the return day, why the order restraining and interdicting the respondents from unlawfully evicting the applicant and threatening, intimidating and disturbing the operations of the applicant at Portion [...] (A portion of Portion [...]) of the farm K[...]B[...] W[...] Rd, Koopmansfontein Sentrum/Filling Station/ (Farmhouse [...], Koopmansfontein, Northern Cape, 8391) should not be confirmed.
4. That order 3 serve as an interim interdict with immediate effect.
5. That the respondents are granted leave to anticipate the return date for the purposes of discharging or varying the interim order on not less than 24 hours’ notice of such application to the applicant.
6. That the first respondent and any other party opposing the granting of the relief herein sought, pay the costs of this application on taxed Scale C, the one paying the other to be absolved.’

¹ 10 of 2013.

It is important to note, contrary to the applicant's submissions, that Stanton J made no findings, the order was granted as drafted and as sought by the applicant.

- [5] It is trite that leave to appeal may only be given where the judge or judges concerned are of the opinion that (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.² The operative word in the former provision is 'would' which demands a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.³ Leave can also be granted where the interests of justice so demand, as this may constitute a compelling reason for the appeal to be heard.⁴
- [6] In the first ground of appeal, Mr Mongala, for the applicant, submitted that the Stanton J order, which he contends needs no interpretation, called upon the respondents to show cause on the return date why they should not be prevented from committing certain acts, including intimidating and threatening the applicant, pending the determination of their rights in the action proceedings. I disagree with this submission. The order called upon the respondents to show cause, if any, why the interim order should not be made final.
- [7] Regard being had to the introductory sentence in order 3 in particular; '... pending a further order in the action proceedings contemplated by the applicant', a few issues become apparent. First, the order sought an interim interdict to restore the status *quo*, pending action proceedings that were in fact not pending as they had not yet been instituted. Second, the same order also subjected the sought interim interdict to a

² Section 17(1)(a) of the Superior Courts Act 10 of 2013. See also *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) para 2.

³ *Mont Chevaux Trust v Goosen and Others* (LCC 14R/2014) [2014] ZALCC 20 (03 November 2014); 2014 JDR 2325 (LCC) para 6.

⁴ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) para 10.

rule *nisi*, calling upon the respondents to show cause why the interim interdict should not be made final. The latter in essence is an order seeking a final interdict. Accordingly, upon the return date of the rule *nisi*, a clear right and not merely a *prima facie* right, had to be established.

[8] The problem in the order sought is in the fact that, the granting of a final interdict necessitates the establishment of the existence of a clear right; which the applicant sought to establish in its contemplated action proceedings only after the granting of a final interdict. That the applicant failed to acknowledge and avoid this problem by *inter alia*, instituting action proceedings with Part A (urgent, seeking to restore the status quo) and Part B (normal, seeking the final determination of rights), cannot be imputed to this Court.

[9] In light of the above, the applicant's reliance on *Van Rooyen and Another v Simms and Others*⁵ ("*van Rooyen*") is misplaced. In *Van Rooyen*, action proceedings were in fact pending before court at the time when a final interdict, albeit couched as an interim interdict, was sought.⁶ The judge was not called upon to grant an interdict awaiting action proceedings that were in fact merely contemplated. Nonetheless and most importantly, Windell J still refused to grant the order sought and held that:

'A court has a discretion in the granting of an interim interdict to be exercised judicially, of which one of the factors is the applicant's prospects of success in the main action. Therefore, it would not be competent to grant an interdict *pendite lite* in these circumstances, as there is no point at which a court will determine the ultimate right. . . . Consequently, the application for an interim interdict must fail.'⁷

⁵ (2022/9719) [2024] ZAGPJHC 1307 (27 December 2024).

⁶ Ibid paras 1, 3 and 7.

⁷ Ibid para 15.

[10] What is similar between *Van Rooyen* and the applicant's case is that, the applicant sought to have this Court grant a final interdict, without determining the parties' rights. Having established that the parties' rights would not be determined in the same proceedings and that the order sought would not be *pendite lite*, the learned judge in *Van Rooyen* held that:

'In reality, the applicants are currently seeking a final interdict. There is however a clear factual dispute between the parties regarding the terms and breaches of the oral agreement, and the applicants have not demonstrated a clear right.'⁸ (My emphasis.)

[11] Accordingly, it is incomprehensible how the applicant expected the court to grant final interdictory relief without considering whether the requirements for a final interdict were met or not. The court would be in a position to do so by considering the papers before it and the argument presented. The main judgment has considered the relevant authorities pertaining to interim and final interdicts and the applicant did not satisfy the requirements for the rule *nisi* to be confirmed. Having made the determinations in the main judgment does not shut the court's doors against the applicant because it may seek this Court's leave to appeal, as it has done, or petition the Supreme Court of Appeal (SCA) having received this judgment. The applicant simply has to do so on grounds that bear reasonable prospects of success.

[12] Further, the applicant seems to have focused on the court's reasoning as a basis for attacking the judgment and to seek leave. In *South African Reserve Bank v Khumalo and Another*⁹ the SCA cautioned:

'An appeal lies against an order that is made by a court and not against its reasons for making the order. It follows that on appeal a respondent is entitled to support the order on any relevant ground and is not

⁸ Ibid para 16.

⁹ 2010 (5) SA 449 (SCA) para 4.

confined to supporting it only for the reasons given by the court below. In this court the respondent did not seek to support the order on any ground other than that, given by the court below, which was that the regulation under which it was made did not conform to the authorising statute and was thus invalid, subject to one subsidiary issue that I will come to. This means that the principal issue on which the appeal turns is whether the full bench was correct in its conclusion on the invalidity of reg 22C(1) for the reasons that it gave. If the respondent fails on that issue and on the subsidiary issue that I referred to, then the order that it made falls to be set aside, and the challenge to the validity of the order falls to be dismissed. The remainder of the notice of motion did no more than foreshadow a review application that was yet to be brought and need not concern us.'

What was before me was whether the first respondent has shown cause, as called upon, for the rule to be confirmed or discharged in line with order 5 of the Stanton J order. The interdictory relief was before me. The action still to be brought was not before me and was not and need not concern me.

[13] I therefore find that the grounds of appeal are without merit, and the appeal would have no reasonable prospects of success. The applicant has neither shown any compelling reason nor argued that the interests of justice demand that the appeal be heard.

[14] The applicant claims that I misdiagnosed what was before me. The Constitutional Court in *Vodacom (Pty) Ltd v Makate and Another*¹⁰ issued the following warning:

'Justice and, indeed, the court processes are not about perfection; courts are not to be held "to some abstract standard of perfection".'¹¹

¹⁰ (CCT 51/24) [2025] ZACC 13; 2025 (10) BCLR 1174 (CC) (31 July 2025).

¹¹ Ibid para 43.

. . .

‘Of critical importance is that “there is no duty on a judge in giving . . . reasons to deal with every argument presented by counsel in support of [their] case”. I say of “critical importance” because some litigants may find this statement of the law attractive for nitpickingly arguing that a court’s judgment failed to deal with this or that point and that, therefore, there was a breach of the right to a fair hearing. Let them be warned that they will not succeed. That is not what this statement of the law is about. It is about the substance of a judgment viewed holistically. So viewed, does the judgment tell a reasonable, if not discerning, reader that there was compliance with the duty of proper consideration? In that regard, it is enough if the judgment identifies the issues that were vital to the determination of the matter and then shows how they were determined. One or two issues may not necessarily be critical for that holistic look at the substance of the judgment.’¹²

[15] I have carefully considered the Notice of Application for leave to appeal and the grounds listed therein where the applicant contends that another court would find the existence of reasonable prospects of success and compelling reasons for the appeal to be heard. I have also considered both the written and oral submissions by counsel. I am unpersuaded by the applicant’s submissions. There are, in my view, no cognisable prospects of success nor compelling reasons that warrant the attention of the Full Court of this Division or the Supreme Court of Appeal. In the result, the application for leave to appeal must fail. There is no reason why costs should not follow the result.

ORDER

1. The application for leave to appeal is dismissed with costs.

¹² Ibid para 57.

MAMOSEBO J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION, KIMBERLEY

Appearances

For the applicant:

Adv J Mongala

Instructed by:

Chande Booysen Attorneys

For the first respondent:

Mr C Kgotlagomang

Instructed by:

Towell & Groenwaldt Attorneys