



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: A56/2021

In the matter between:

SAREL JACOBUS VAN DER WALT

APPLICANT

and

CLOETE MURRAY N O

FIRST RESPONDENT

RUWAYNE SMITH N O

SECOND RESPONDENT

Neutral citation: Van der Walt v Murray N O & Another (A56/2021) [2025] ZAFSHC 345 (03 November 2025)

Coram: MBHELE AJP

Heard: In Chambers

Delivered: 03 November 2025

Summary: Application for leave to appeal – functus officio – rule 42(1)(b) of the Uniform Rules of Court – curing an omission in a court order – costs of the appeal.

ORDER

1 The application for leave to appeal is dismissed with costs including costs of counsel at scale C.

JUDGMENT

Mbhele AJP

[1] On 03 June 2025, I supplemented an earlier order, wherein I had omitted to grant a costs order in an application for leave to appeal, by adding that '*costs shall be costs in the appeal*'. I further declined to grant an application to review the Taxing Mistress' decision to grant costs in favour of the first and second respondent.

[2] The reasons for not granting the relief sought by the applicant and supplementing my earlier order can be gleaned from my written judgment. It suffices to say that when it became apparent that I omitted to expressly state who should bear the costs for the application for leave to appeal, although a costs order was requested by the successful party, I invoked the provisions of rule 42(1)(b) of the Uniform Rules of Court.¹

[3] In reaching the conclusion, I found that the court has the authority to *mero motu* rescind or vary an order in which there is an ambiguity or a patent error or omission. It is a fundamental principle of our law that an order must be effective and capable of being

¹ Rule 42(1)(b) of the Uniform Rules of Court, provides:

'(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.'

obeyed and enforced. That principle underpins the legitimacy and very purpose for which an order is made.

[4] It is well established that once a court has pronounced a final judgment or order, it becomes *functus officio* and lacks authority to correct or supplement the order. The principle of *functus officio* elevates finality and certainty over perfectionism. However, this rule is not absolute, there are exceptions which are well recognised in our law where the decision maker is permitted to re-engage with the order to cure defects that render it ambiguous. The omission of a costs order falls within the ambit of exceptions recognised in our law. In *Firestone South Africa (Pty) Ltd v Gentiruco AG*,² the Supreme Court of Appeal identified the following exceptions to the *functus officio* rule:

- '(i) The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt, that the Court overlooked or inadvertently omitted to grant.
- (ii) The Court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter "the sense and substance" of the judgment or order.
- (iii) The court may correct a clerical, arithmetical, or other error in its judgment or order so as to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order; it does not extend to altering its intended sense or substance.
- (iv) Where counsel has argued the merits and not the costs of a case (which nowadays often happens since the question of costs may depend upon the ultimate decision on the merits), but the Court, in granting judgment, also makes an order concerning the costs, it may thereafter correct, alter or supplement that order.'

[5] This application was predicated upon sections 17(1)(a)(i) and/or (ii). Section 17(1)(a)(i) has not only raised the bar for applications for leave to appeal but also fettered the Judge's discretion when considering such applications. Leave to appeal may only be given when the Judge or Judges are of the opinion that the appeal would have a reasonable prospect of success.

² *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) 306H-307H. See also *Tahilram v Trustees of the Lukamber Trust and Another* [2021] ZASCA 173; 2022 (2) SA 436 (SCA) para 19.

[6] I have read my judgment and carefully considered the heads of argument filed in this application for which I thank both counsel appearing on behalf of the parties. I have come to the conclusion that none of the grounds of appeal enjoy reasonable prospects of success. The application for leave to appeal must fail.

[7] In the circumstances, I make the following order:

1 The application for leave to appeal is dismissed with costs including costs of counsel at scale C.


A handwritten signature in black ink, consisting of a large, stylized 'N' and 'M' followed by a surname, is written over a solid black rectangular redaction box.

N M MBHELE

ACTING JUDGE PRESIDENT OF THE HIGH COURT

Appearances

For the applicants: J E Bester

Instructed by: FJ Senekal Inc, Bloemfontein

For the respondents: N J Horn

Instructed by: McIntyre Van Der Post Inc, Bloemfontein.