

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 017605/2024

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

04/11/2025

DATE

SIGNATURE

In the matter between:

HAFIZ SAQIB SADDIQ

Applicant

and

THE STATE OF SOUTH AFRICA

First Respondent

THE MINISTER OF POLICE

THE NATIONAL COMMISSIONER OF THE

Second Respondent

THE SOUTH AFRICAN POLICE SERVICE

Third Respondent

THE MINISTER OF HOME AFFAIRS

Fourth Respondent

THE DIRECTOR GENERAL OF

HOME AFFAIRS

Fifth Respondent

THE NATIONAL DIRECTOR OF PUBLIC

PROSECUTIONS

Sixth Respondent

THE HEAD OF THE DIRECTORATE FOR

PRIORITY CRIMES INVESTIGATIONS

Seventh Respondent

THE HEAD OF THE DIRECTORATE FOR

PRIORITY CRIMES INVESTIGATIONS

Eighth Respondent

THE DEPARTMENT OF JUSTICE

AND CONSTITUTIONAL DEVELOPMENT

Ninth Respondent

THE MINISTER OF JUSTICE

AND CORRECTIONAL SERVICES

Tenth Respondent

JUDGMENT

ON APPLICATION FOR LEAVE TO APPEAL

Mahosi, J

[1] This is an application for leave to appeal against the judgment and order of this Court, handed down *ex tempore* on 24 May 2024, in which the applicant's main application was dismissed.

[2] The main application sought, in essence, an order for "anticipatory bail" and an interdict restraining the respondents from harassing or arresting the applicant without just cause. The respondents, while served with the application, did not file opposing papers. The applicant places significant weight on this fact, arguing that it should have led to a default judgment in his favour.

[3] Having considered the applicant's founding affidavit and legal submissions, this Court dismissed the application. The applicant now seeks leave to appeal that

dismissal.

[4] The applicant's grounds for leave to appeal, as distilled from his papers, can be summarised as follows:

- 4.1 The Court erred by failing to properly consider the issues of bail before arrest and the interdict.
- 4.2 The Court failed to consider all the facts placed before it, particularly international case law regarding interim or anticipatory bail.
- 4.3 The Court failed to consider that the respondents' non-opposition and their request to be kept updated indicated that granting the application would not prejudice them.
- 4.4 The Court should have found that the applicant was a victim of unlawful harassment and should have granted the interdict.
- 4.5 The Court should have declared the conduct of the respondents' representatives unconstitutional and an abuse of state resources.
- 4.6 The Court should have ordered the respondents to amend the Criminal Procedure Act to include a provision for "anticipatory bail."
- 4.7 The Court erred in not granting a default judgment due to the respondents' failure to oppose the application.

[5] Section 17 of the Superior Courts Act¹ regulates the granting of applications for leave to appeal. The test pertinent to the present matter is set out in section 17(1)(a) as follows:

- “(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

¹ Act 10 of 2013.

- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;”

[6] It is apparent from the above provisions that the test for granting leave to appeal is stringent. It is not enough for an applicant to be dissatisfied with the outcome. Instead, he must demonstrate a sound and rational basis for the conclusion that there is a reasonable prospect that another court would come to a different conclusion. Thus, mere disagreement with the Court's assessment is insufficient.

[7] In the current matter, the applicant sought “anticipatory bail”, which is not recognised in our law, and his case for an interdict was not established on the papers. In the circumstances, this Court is not persuaded that another court would arrive at a different conclusion. The applicant's contention that this Court was obliged to grant a default judgment is a misapprehension of the law. The role of a Court is to consider whether the applicant, on his own papers, has made out a case for the relief sought. The fact that a respondent does not oppose does not automatically entitle an applicant to an order. The Court must still be satisfied that the application is legally sound and that the relief sought is competent. In this case, even in the absence of opposition, the applicant's pleadings failed to disclose a cause of action recognised by our law for “anticipatory bail” and were also unable to establish the necessary facts for a final interdict. An appeal on the above grounds is, therefore, without merit.

[8] The applicant also invokes the “interest of justice” ground. However, where, as herein, an appeal has no reasonable prospects of success, it cannot be in the interest of justice to grant leave. Instead, granting it would amount to a waste of scarce judicial resources and prolong a matter that is legally untenable. For the above reasons, this application stands to be dismissed.

[9] Accordingly, the following order is made:

1. The application is dismissed.
2. There is no order as to costs.



D. Mahosi J
Acting Judge of the High Court

Date of hearing: 10 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email and uploaded on Caseline. The hand-down date is deemed to be 4 November 2025.

Appearances

For the applicant: Self