

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2024-001253

DATE: 11 November 2025

In the matter between:

THRU RAINBOW (PTY) LIMITED

Applicant

and

NATIONAL TREASURY

First Respondent

THE MINISTER OF FINANCE N O

Second Respondent

ERESA AFRICA (PTY) LTD

Third Respondent

ERESA (PTY) LTD

Fourth Respondent

JOHANNES FREDERIK

Fifth Respondent

JANSE VAN RENSBURG BRUMMER

Sixth Respondent

KIMBERLEY DANIELLE ANANTHAN

Seventh Respondent

TORINET (PTY) LTD

Eighth Respondent

ERNESTIA BRUMMER

Ninth Respondent

RENIER OCKERT SMIT

Tenth Respondent

REINHARDT BODENSTEIN

Neutral Citation: *Thru Rainbow v National Treasury and Others* (2024-001253) [2025] ZAGPJHC --- (11 November 2025)

Coram: Adams J

Heard on: 10 November 2025 – ‘virtually’ as a videoconference on *Microsoft Teams*

Delivered: 11 November 2025 – This judgment was handed down electronically by circulation to the parties’ representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 11 November 2025.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold –

Leave to appeal granted to the Full Court of the Division.

ORDER

- (1) The applicant is granted leave to appeal to the Full Court of this Division.
 - (2) The cost of this application for leave to appeal shall be costs in the appeal.
-

JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original opposed judicial review application by the applicant ('Thru Rainbow') for an order reviewing and setting aside an award by the first respondent ('National Treasury') to the third respondent ('Eresa Africa') and the seventh respondent ('Torinet') of tender number TT4-2023, descriptively titled as a Bid for 'The Supply and Delivery of Emergency and Rescue Equipment to the State for a period of 60 months' ('the Tender'). The applicant in the original review application also applied for ancillary relief. On 14 March 2025 I dismissed, with costs, the applicant's aforesaid application. The applicant is also the applicant in this application for leave to appeal and the respondents herein were the respondents in the main application.

[2]. The applicant applies for leave to appeal against the whole of the aforementioned judgment and the order, including the order for costs, as well as against the reasons for such order. The applicant contends that I erred in dismissing the application and that I should instead have granted the relief prayed for by it in the said application.

[3]. In a nutshell the applicant's case in this application for leave to appeal is that I erred in finding that the submission of a BB-BEE status level verification certificate or a sworn affidavit signed by the bidder is not a mandatory pre-qualification condition. I should not have found, so the contention continues,

that proof of BB-BEE status by other means could be adduced. The legal principles under this ground, so the applicant submits, apply equally to the findings of the court *a quo* in respect of the failure to submit an organogram by both the third respondent (Eresa Africa) and the seventh respondent (Torinet).

[4]. The applicant consequently submitted that I erred in dismissing this ground of review and the ground relating to the organogram. My approach, so the argument is concluded, is contrary to the authoritative position set by the Supreme Court of Appeal in *Eskom Holdings SOC Limited v Babcock Ntuthuko Engineering*¹.

[5]. The applicant furthermore submits that I erred in not accepting the second ground on which the review application was based, namely that Torinet misrepresented the relationship between it and its main supplier (United Conscious (Pty) Ltd). I should have found, so it is contended on behalf of the applicant, that Torinet was obliged to indicate this relationship in its bid documents but failed to do so, which constitutes a material misrepresentation and means that Torinet ought to have been disqualified. Ditto, so the applicant contends, as regards the third ground in relation to Torinet's tax compliance status and the fourth ground relating to collusion between Torinet and Eresa Africa in their bid submissions.

[6]. Nothing new has been raised by the applicant in its application for leave to appeal. In my original judgment of 14 March 2025, I have dealt with most, if not all of the issues raised by the applicant in this application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate what I say in my said judgment, which is that, in the final analysis, the procurement process followed by National Treasury and the subsequent award of the tender to Eresa Africa and Torinet were 'in accordance with a system which is fair, equitable, transparent, competitive and cost effective'. It therefore complied with the letter and the spirit of Section 217(1) of the Constitution.

¹ *Eskom Holdings SOC Limited v Babcock Ntuthuko Engineering* [2024] ZASCA 63 at paragraphs 39 to 45.

[7]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that leave to appeal may only be given where the judges concerned are of the opinion that 'the appeal would have a reasonable prospect of success'.

[8]. In *Ramakatsa and Others v African National Congress and Another*², the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a court of appeal 'could' reasonably arrive at a conclusion different to that of the trial court. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[9]. The ratio in *Ramakatsa* simply followed *S v Smith* 2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success. That the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

[10]. In *Mont Chevaux Trust v Tina Goosen*³, the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*⁴. In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁵.

[11]. I am persuaded that the issues raised by the applicant in its application for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. I therefore conclude that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does have a reasonable prospect of success.

[12]. Leave to appeal should therefore be granted. I do not however believe that, in view of the complexity of the legal issues raised, leave to appeal should be granted to the Supreme Court of Appeal. I therefore intend granting leave to appeal to the Full Court of this Division.

Order

[13]. In the circumstances, the following order is made:

³ *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

⁴ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

⁵ *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

- (1) The applicant is granted leave to appeal to the Full Court of this Division.
- (2) The cost of this application for leave to appeal shall be costs in the appeal.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	10 November 2025 – ‘virtually’ as a videoconference on <i>Microsoft Teams</i>
JUDGMENT DATE:	11 November 2025 – Judgment handed down electronically
FOR THE APPLICANT:	Y Alli
INSTRUCTED BY:	Hajibey-Bhyat Mayet & Stein Inc, Illovo, Sandton
FOR THE FIRST AND SECOND RESPONDENTS:	Z Z Matebese SC, with N Sibeko
INSTRUCTED BY:	The State Attorney, Pretoria
FOR THE THIRD AND SIXTH RESPONDENTS:	I Maharajh
INSTRUCTED BY:	Shaun Pillay Attorneys Incorporated, Durban
FOR THE FOURTH, FIFTH AND EIGHTH RESPONDENTS:	No appearance
INSTRUCTED BY:	W Duursema Attorneys, Sunward Park, Boksburg
FOR THE SEVENTH RESPONDENT:	H P West
INSTRUCTED BY:	Kruger & Okes Attorneys, Nigel
FOR THE NINTH AND TENTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance