

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



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

Case no: 1416/2025

In the matter between:

SISHEN IRON ORE COMPANY (PTY) LTD Applicant

and

ISAGO KA LEFIKA (PTY) LTD Respondent

In re:

ISAGO KA LEFIKA (PTY) LTD Applicant

and

SISHEN IRON ORE COMPANY (PTY) LTD First Respondent

GARETH CHAPMAN Second Respondent

NATIE POTGIETER Third Respondent

Coram: MAMOSEBO J

Heard: 25 August 2025.

Delivered: 14 November 2025.

Summary: Application for leave to appeal – Reliance on s 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 – Reasonable prospects of success, compelling reasons, and interests of justice – None established – Reliance on new grounds impermissible – Doctrine of finality re-emphasised.

ORDER

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

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

Mamosebo J

- [1] On 18 July 2025, in a judgment under the above case number, I granted a rule *nisi* with a return date of 8 August 2025 directing the applicant, Sishen Iron Ore Company (Pty) Ltd (“Sishen”), and two of its employees who are not parties in this application, to show cause why paragraphs 2.1 to 2.3 of the order in that judgment should not be made final.
- [2] On 24 July 2025, while awaiting the return date of the rule *nisi* referred to above, Sishen brought an application for leave to appeal to the Supreme Court of Appeal (“SCA”), alternatively, the Full Court of the Northern Cape Division, against paragraph 2.3 (and its subparagraphs) of the order and judgment handed down on 18 July 2025. At the time of hearing this application (for leave to appeal), the return date of the rule *nisi* issued on 18 July 2025 was extended pending the determination of this application.

[3] Sishen contends that not only would the appeal have a reasonable prospect of success, but that there is also a compelling reason for the appeal to be heard, including the conflicting judgments, namely, the impugned judgment *in casu* and *Hlwella MK JV Joint Venture (Pty) Limited v Sishen Iron Ore Company Limited*¹ (“*Hlwella*”). The confliction is said to be on the interpretation of a contract.

[4] Paragraph 2.3 of the order stipulates in relevant part that:

‘2.3 ... pending the outcome and final determination of the mediation, arbitration and appeal, if applicable, on the question of the first respondent’s entitlement to terminate the agreement and validity of the termination (and the issues and disputes related thereto), in accordance with the provisions of clauses 5.1, 5.2, 5.3, and 5.4 of Part D of the agreement:

2.3.1 the respondents be interdicted and restrained from taking any steps of whatsoever nature to procure the services of another service provider or entity to replace the applicant and perform plant maintenance and related services at the Jig Plant Beneficiation and Modular at the first respondent’s Sishen Mine, or any services similar to that provided by the applicant in terms of the agreement.

2.3.2 the respondents be interdicted and restrained from ejecting the applicant, its directors, or any of its employees from their site at the first respondent’s Sishen Mine; and

2.3.3 the respondents be interdicted and restrained from in any way blocking or disallowing the applicant, its directors, or employees, access to the first respondent’s Sishen Mine.

3. The order in paragraph 2.3 and its subparagraphs above is to operate as an interim interdict with immediate effect.’

¹ Gauteng High Court unreported judgment under case number 2025 – 036869.

- [5] Despite the fact that Sishen has listed six paragraphs, four of which have subparagraphs, as appearing in its Notice of Application for Leave to Appeal dated 24 July 2025, in substantiation of its submission that the Court erred in its findings, the main argument relied on essentially involves whether I was correct in granting paragraph 2.3 of the rule *nisi* and further ordering that it serves as interim interdict calling upon the respondents to show cause why it should not be made final. Sishen insists that it is incurring irreparable harm as a result of the impugned paragraphs, and that it is therefore in the interests of justice to grant it leave to appeal. This is what is contended in Sishen's heads:

‘Although the order in paragraph 2.3 is in the form of an interim order, we submit it is final in effect, and that even if the Court were to find that it is not final in effect, it is in the interests of justice that leave to appeal be granted.’

Of significance is that Sishen prays in this application that the order be varied by the deletion of paragraphs 2.3 and 3, and that the costs of this application be costs in the appeal.

Applicable legal principles:

- [6] It is common cause that the impugned order is pending before court. The legal principles on the appealability of a court order were established in *Zweni v Minister of Law and Order*² (“*Zweni*”). The judgment or order against which leave to appeal is sought must be final in effect; definitive of the rights of the parties; and have the effect of disposing of at least a substantial portion of the relief claimed. The SCA has confirmed these principles on several occasions in relation to the appealability of orders

² 1993 (1) SA 523 (A) at 532I – 533B.

that are in essence interim in particular.³ Importantly, the test is not to be applied rigidly. It is now trite law that the interests of justice may nonetheless necessitate that an appeal be heard even if the impugned order falls short of the three requirements in *Zweni*.⁴

- [7] On the interests of justice standard, the Constitutional Court (“ConCourt”) in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*⁵ held:

‘Whether this court should grant leave turns on what the interests of justice require. Whether it is in the interests of justice to hear and determine the matter involves a careful balancing and weighing up of all relevant factors. However, there is no concrete and succinct definition of the phrase “interests of justice” and what it really entails.’

- [8] While the ConCourt in *International Trade Administration Commission v SCAW South Africa (Pty) Ltd*⁶ (“ITAC”) identified irreparable harm as one of the important factors in assessing whether leave to appeal should be granted,⁷ it also emphasised that such a factor is to be considered alongside all other relevant factors. In this regard, it was held that ‘[w]hether it is in the interests of justice to grant leave to appeal hinges on a cluster of interactive considerations’ which must be carefully

³ See for example *Cronshaw and Another v Coin Security Group (Pty) Ltd* 1996 (3) SA 686 (A). See also *S v Western Areas Ltd and Others* [2005] 3 All SA 541 (SCA); 2005 (1) SACR 441 (SCA); 2005 (5) SA 214 (SCA) para 20:

‘The appealability decisions of this Court are based on the “salutary general rule that appeals are not entertained piecemeal”. Appeals are, generally, precluded before final determination of a case unless the judicial pronouncement sought to be appealed against, whether referred to as a judgment, order, ruling, decision or declaration, has three attributes. First, it must be final in effect. That means it must not be susceptible of alteration by the court appealed from. Second, it must be definitive of the rights of the parties, for example, because it grants definite and distinct relief. Thirdly, it must have the effect of disposing of at least a substantial portion of the relief claimed. Clearly, whether these criteria are met does not depend on judicial discretion.’

⁴ *S v Western Areas Ltd and Others* (supra) fn 3 para 25 – 26. See also *Philani-Ma-Afrika and Others v Mailula and Others* 2010 (2) SA 573 (SCA); [2010] 1 All SA 459 (SCA) para 20.

⁵ [2022] ZACC 34; 2022 (12) BCLR 1521 (CC); 2023 (1) SA 353 (CC) para 34.

⁶ [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC).

⁷ *Ibid* para 54 – 55.

evaluated.⁸ Indeed, this is so that a court must consider each case in the light of its own facts.⁹

- [9] In *casu*, the impugned judgment dealt with the contested requirements for an interim order, among other things. In *Baliso v Firstrand Bank Ltd t/a Westbank*,¹⁰ it was held:

‘In this court, the principles applicable to the appealability of decisions were comprehensively dealt with by Moseneke DCJ in *ITAC*:

“The question whether an appeal against a decision of the High Court may lie directly to this court is governed by s 167(6)(b) of the Constitution read with rule 19. The constitutionally prescribed standard is whether it is in the interests of justice for this court to hear an appeal. In *Khumalo and Others v Holomisa* this court held that it is not a jurisdictional requirement for an appeal to this court that the matter must involve a ‘judgment or order’ within the meaning of s 20(1) of the Supreme Court Act. However, the court pointed out that it will not often be in the interests of justice for this court to entertain appeals against interlocutory rulings which do not have a final effect on the dispute between the parties.

The same point was made again in *Minister of Health and Others v Treatment Action Campaign and Others (No 1) (TAC(I))*:

“The policy considerations that underlie the non-appealability of interim execution orders in terms of s 20 of the Supreme Court Act, are also relevant to the decision whether it is in the interests of justice to grant an application for leave to appeal to this Court against an interim execution order.”

In this sense, the jurisprudence of the Supreme Court of Appeal on whether a judgment or order is appealable remains an important consideration in assessing where the interests of justice lie. An authoritative restatement of the jurisprudence is to be found in *Zweni* which has laid down that the decision must be final in effect and not open to alteration by the court of first instance; it must be definitive of the rights of the parties; and lastly, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. On these general principles the Supreme Court of Appeal has often held that the grant of an interim interdict is not susceptible to an appeal.

⁸ *Ibid* para 41. See also *Supra* fn 5 para 35.

⁹ *Supra* fn 6 para 41.

¹⁰ 2017 (1) SA 292 (CC) para 7.

The policy considerations that underlie these principles are self-evident. Courts are loath to encourage wasteful use of judicial resources and of legal costs by allowing appeals against interim orders that have no final effect and that are susceptible to reconsideration by a court a quo when final relief is determined.” (Footnotes omitted.)

- [10] Significantly, the SCA in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others*¹¹ was at pains cautioning against the adoption of the interests of justice standard as the main and general standard on appealability issues to the SCA. It ultimately concluded that:

‘Even if this is so as a matter of principle ...[that] a number of decisions of this court have been willing, with different degrees of separation, to part from *Zweni*, or subsume *Zweni* in the capacious remit of the interests of justice. I do not here essay a general account of appealability. I do affirm, though, that the doctrine of finality must figure as the central principle of consideration when deciding whether a matter is appealable to this court. Different types of matters arising from the High Court may (I put it no higher normatively) warrant some measure of appreciation that goes beyond *Zweni* or may require an exception to its precepts. Any deviation should be clearly defined and justified to provide ascertainable standards consistent with the rule of law. Recent decisions of this court that may have been tempted into the general orbit of the interests of justice should now be approached with the gravitational pull of *Zweni*.’¹²

I note that Sishen sought leave to appeal not only to the SCA, but to the Full Court of this Division in the alternative. I am convinced, however, that the principles necessitated by the rule of law as enunciated above are equally applicable in relation to appeals sought to be heard by the Full Court.

¹¹ [2023] ZASCA 63; 2023 (5) SA 163 (SCA) para 19 – 30.

¹² *Ibid* para 30.

- [11] The importance of finality has been especially emphasised in the promotion of the rule of law. The SCA in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others (supra)* made these instructive remarks:

‘Whether the decision of a court is appealable is a matter of great importance, both for litigants and for the discharge by an appellate court of its institutional functions. That is why the doctrine of finality has figured so prominently in the jurisprudence of this court. As a general principle, the High Court should bring finality to the matter before it, in the sense laid down in *Zweni*. Only then should the matter be capable of being appealed to this court. It allows for the orderly use of the capacity of this court to hear appeals that warrant its attention. It prevents piecemeal appeals that are often costly and delay the resolution of matters before the High Court. It reinforces the duty of the High Court to bring matters to an expeditious, and final, conclusion. And it provides criteria so that litigants can determine, with tolerable certainty, whether a matter is appealable. These are the hallmarks of what the rule of law requires.’¹³

- [12] Finally, the ConCourt in *ITAC* also held that the prospects of success, although not alone decisive, remain a crucial consideration when determining whether to grant leave against interim orders.¹⁴ It is indeed trite law that, in terms of section 17 of the Superior Courts Act,¹⁵ leave should only be granted if the applicant has satisfied the court that the appeal would have a reasonable prospect of success or that there is some compelling reason why the appeal should be heard.¹⁶

Analysis:

¹³ *Ibid* para 21.

¹⁴ *Supra* fn 6 para 41.

¹⁵ 10 of 2013.

17 Leave to appeal

(1) Leave to appeal may only be given where the judge or judges are of the opinion that –

(a) (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.

¹⁶ See generally *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA); *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC); *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021).

- [13] Sishen was well aware when seeking leave that the order in paragraph 2.3 was already pending before Court. It would not be sensible to have the order varied and deleted as it also involves two of Sishen's employees who are not parties in this application, and whose matter must still be adjudicated upon by the Court where the rule *nisi* may either be confirmed or discharged. Accordingly, paragraph 2.3 of the order sought to be appealed against is not final in effect, not definitive of the parties' rights, and therefore generally not appealable.
- [14] Importantly, in the order that leave for appeal is being sought against, this Court has specified that should the dispute resolution process outlive the term of the contract (February 2026), the interdictory order will lapse with the contract, which would have ended by effluxion of time. Clearly, Sishen is avoiding two processes available to it: firstly, the provisions of the contract between the parties directing them to pursue dispute resolution processes; and secondly, the return date of the *rule nisi*, where paragraph 2.3 and its subparagraphs could have been fully ventilated by now.
- [15] Further, Sishen's reliance on *Hlwella* is misplaced because issues argued before this Court pertaining to the contractual rights stemming from the contract, particularly where the contract referred to a 'Total Cost' (monthly) and the written amendment of the contract referring to a 'Fixed Monthly Cost', were not argued in *Hlwella*. Therefore, Sishen's contention that it would be in the interests of justice for the appeal to be heard because of conflicting judgments is without merit as *Hlwella* is distinguishable from the issues in *casu*.

- [16] Even more problematic is that Sishen's counsel, Mr Franklin SC (who did not appear in the interim interdict applications), seeks in its heads of argument to make out a completely new case on its behalf. Mr Eillert, for Isago, correctly asked the court to disregard the submissions made on behalf of Sishen, which were not canvassed when the matter was argued before the court. Arguing a completely new case when seeking leave ignores all the well-established rules of practice governing motion proceedings and cannot be countenanced by this Court.¹⁷
- [17] Sishen cannot be allowed to raise completely new issues not only in the application for leave to appeal, but also in the written submissions, without having indicated that it intends seeking the Court's indulgence at the hearing to adduce further evidence on appeal in terms of s 19(b) of the Superior Courts Act. It seems to me that it has adopted a stratagem that seeks at every turn to advance the issue of non-availability of purchase orders and non-exclusivity of the contract, which, in my view, is nothing less than obfuscating. As mentioned in paragraph 14 above, Sishen has two forums open to it at this stage to address the issue of the termination of the contract and paragraph 2.3 of the order.
- [18] I also point out that the ConCourt has cautioned in *Vodacom (Pty) Ltd v Makate and Another*¹⁸ that the principles enunciated in that judgment are not an open sesame for litigants to subject adverse judgments to nitpicking analysis with a view to trying to show the inadequacy of reasons.
- [19] Having dispassionately considered the grounds raised by Sishen in an effort to determine whether there are reasonable prospects that another

¹⁷ See for example *KSL v AL* 2024 (6) SA 410 (SCA) para 25.

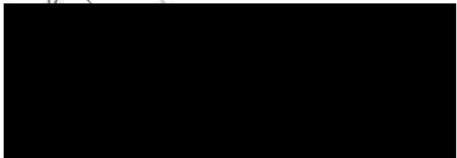
¹⁸ (CCT 51/24) [2025] ZACC 13 (31 July 2025) para 65.

court would come to a different finding than this Court, whose judgment is sought to be appealed against, I have not found any. There are also no compelling reasons that warrant the attention of the Supreme Court of Appeal or the Full Court of this Division on appeal. I am further not satisfied that it would be in the interests of justice for leave to be granted. In the result, the application for leave to appeal must fail. There is no reason why costs should not follow the result.

Order:

[20] In the result, the following order is made:

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

M.C. MAMOSEBO
 JUDGE OF THE HIGH COURT
 NORTHERN CAPE DIVISION

Appearances

For the Applicant:	Adv. A Eillert
Instructed by:	JKL Ikaneng Attorneys c/o L-M Attorneys & Partners Inc
For the First Respondent:	Adv. AE Franklin SC Adv. KAR Thobakgale
Instructed by:	Cliffe Dekker-Hofmeyr Inc c/o Van de Wall Inc