



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no.: 2025-045751

In the matter between:

EGIDIUS WILLEM VERSTEIJNEN

APPLICANT

and

**COLLINS PROPERTY GROUP LIMITED
THE SHERIFF (LOWER TUGELA)
KWADUKUZA LOCAL MUNICIPALITY**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

ORDER

The following order is granted:

The application for leave to appeal is dismissed with costs.

JUDGMENT

BRAMDHEW AJ

Introduction

[1] This is an application for leave to appeal against the cost order that I granted against the applicant on 4 April 2025. I directed that the applicant pays the first respondent's costs on the party and party scale C.

[2] The applicant launched an urgent application, requiring the first respondent to prepare an affidavit within truncated timeframes. On the morning upon which the applicant had set the matter down, having had sight of the first respondent's answering affidavit, the applicant applied for an order adjourning the matter in order to consider the answering affidavit and the documents delivered, and to then deliver a replying affidavit. The adjournment was granted, but costs were awarded to the first respondent on scale C.

[3] The applicant seeks to appeal the cost order and the scale on which it was granted.

The legal framework

[4] The award of costs is in the discretion of the presiding judicial officer. As emphasised by the Constitutional Court in *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another*¹ and *Hotz and Others v University of Cape Town*,² costs orders fall within the category of a true discretion, meaning that an appellate court may interfere only where the discretion was not exercised judicially.

[5] This is reinforced by s 16(2)(a) of the Superior Courts Act 10 of 2013 (the Act'), which provides that no appeal lies against a cost order only, unless there are exceptional circumstances that warrant the hearing of such an appeal.

¹ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC) para 85.

² *Hotz and Others v University of Cape Town* [2017] ZACC 10; 2018 (1) SA 369 (CC) paras 25 and 28.

[6] Further, s 17(1)(a) of the Act requires that leave may be granted only if the appeal would have a reasonable prospect of success or there is some other compelling reason why it should be heard. An arguable case or a mere possibility of success is not enough; there must be a sound, rational basis to conclude that success on appeal is reasonably likely.³

[7] In *Mukanda v South African Legal Practice Council*,⁴ the court confirmed that appeals on costs alone are rarely allowed. The applicant bears the onus of establishing exceptional circumstances justifying appellate interference. The court stated:

‘[9]In light of ss 16(2)(a)(ii), 17(1)(a) and 17(1)(b) of the Act and the case law referred to hereinbefore, it can thus be stated that a court will not grant an application for leave to appeal against a costs order only, unless the applicant can satisfy the court that an appeal court would reasonably find that exceptional circumstances exist that warrant such leave. In the absence of exceptional circumstances, the appeal would not have any reasonable prospect of success, and the application for leave to appeal will consequently have to be dismissed.’

[8] In respect of the scale of costs awarded, in *Gourlay v Road Accident Fund*,⁵ the court held that:

‘Awarding counsel’s fees on Scale B or C Scale has nothing to do with a punitive goal.’

Application to the facts

[9] The order granted is one solely as to costs. The applicant instituted an urgent application. The first respondent was compelled to instruct counsel and prepare an answering affidavit to meet the applicant’s urgent case. Upon receipt of the first respondent’s answering affidavit, the applicant sought the court’s indulgence to adjourn the matter. The matter was adjourned with no substantive

³ *MEC for Health, Eastern Cape v Mkhitha and Another* [2021] ZASCA 176 para 17.

⁴ *Mukanda v South African Legal Practice Council* 2021 (4) SA 292 (GP).

⁵ *Gourlay v Road Accident Fund* [2024] ZAWCHC 398 para 61.

rights being determined by the court. In those circumstances, it was entirely appropriate that the first respondent be awarded its wasted costs.

[10] Further, the assessment of an appropriate scale is also a matter of judicial discretion.⁶

[11] The cost order reflected settled principles governing wasted costs which fall squarely within the judicial exercise of discretion contemplated by the authorities.

[12] The applicant has not shown that the discretion was exercised improperly, nor has any exceptional circumstance been shown to exist. There is no compelling reason why an appeal should be entertained.

Order

[13] I therefore make the following order:

The application for leave to appeal is dismissed with costs.

BRAMDHEW AJ

⁶ Ibid para 54.

Case information

Heard on: 18 July 2025

Judgment delivered: 17 September 2025

For the applicant: Mr Cassan

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