



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case Number: **2025-066625**

In the matter between:

TREVOR STUURMAN

First Applicant

TREVOR STUURMAN FOUNDATION

Second Applicant

(Registration Number: 2019/388152/08)

And

KELEBOGILE TSHOLOFOLO SYLIA KODISANG

First Respondent

DAHLIA MAUBANE

Second Respondent

FHULUFELO MOBADI

Third Respondent

BONGIWE PHAKHATI

Fourth Respondent

FIONA DAVHANA

Fifth Respondent

SIMPHIWE JULIA THABEDE

Sixth Respondent

Coram: DA SILVA SALIE, J**Heard on: 5 August 2025****Delivered on: 4 November 2025****Summary:**

Leave to Appeal – Interdict (Part A) – Relief granted to preserve the status quo pending final determination of Part B – Meaning and effect of the term “pending” examined – Held: the Order of 21 May 2025 was expressly interim in nature, provisional and conditional upon a later judicial determination of ownership, authorship and entitlement – To read the word “pending” otherwise would render it tautologous and invert the order’s plain purpose – The relief served only as a holding measure; the final adjudication remains for Part B – no reasonable prospects that another Court would read a different conclusion – Order not of final effect – Piecemeal appeals discouraged. Leave to appeal dismissed with costs.

ORDER

“(i) The late delivery of the application for leave to appeal is condoned.

(ii) The application for leave to appeal is dismissed with costs.”

JUDGMENT

DA SILVA SALIE, J:

Introduction

[1] This is an application for leave to appeal against the judgment and order delivered *ex tempore* on 21 May 2025, arising from the application heard on the urgent roll of the same date. The urgency stemmed from an art exhibition which was then underway at THK Gallery, De Waterkant, Cape Town in terms of which Mr. Trevor Stuurman, a photographer, creative director and artist had on exhibition under the title: “*Your Beauty is our Concern*” artwork accessible to the public from 24 April 2025 until 30 May 2025. The exhibition was a thematic presentation of hairstyles as the central artistic motif with the socio-economic political framing of hairstylists’ narratives.

[2] The respondents (applicants a quo) collaborated as the Wozasisi Collective (“WC”) in curating and publicly exhibiting a body of work around April/May 2023 titled: “*Your Beauty is My Concern*” in Johannesburg. The exhibition explored themes dealing with the lived realities of socio-economic struggles of female hairstylists operating in downtown Johannesburg. The WC submitted that it was formed by the respondents as an independent artistic initiative aimed at amplifying the narratives of marginalised communities through social engaged creative expression, in respect of which they had garnered critical acclaim, commercial success with artwork sales, acclaim on national media platforms of SABC, Newsroom Afrika and Metro FM as well as licensing enquiries. They also launched a book of the same title portraying the realities and socio-economic struggles of women stylists who have businesses in downtown Johannesburg. WC is a female led organization which was established in 2012 to increase visibility and opportunities for black women artists.

[3] The respondents sought relief from this Court to interdict the exhibition and further relief, couched as Part A and B. They took issue that the applicants' work bears an unmistakeable resemblance to their original work and that no credit or authorisation was afforded to them given that they developed a significant reputation in connection with their original work and theme: *"Your Beauty is My Concern"*.

[4] In terms of the order, relief was granted pending the final determination of Part B of the proceedings. The relevant portion of the order reads as follows:

- "(i) The respondents are interdicted and restrained from disseminating, exhibiting and proceeding with the presentation of the exhibition titled: "Your Beauty is My Concern" including "Your Beauty is Our Concern", pending the final determination of the relief sought in Part B of this application, including removal of any posts on social media and other public platforms of the label, title and or get-up as "Your Beauty is Our Concern" within 24 (twenty four) hours of the granting of this Order;*
- (ii) The respondents are interdicted and restrained from selling, transferring or otherwise disposing of any artworks associated with the exhibition under the theme "Your Beauty is My Concern" including "Your Beauty is Our Concern" pending the final determination of the relief sought in Part B of this application.*
- (iii)"*

[5] The applicants contend that the Court erred in its findings on the existence of a clear right, the application of the law of passing-off, and the distinction between copyright and common-law intellectual-property protection.

Grounds of Appeal

[6] The main grounds advanced are that—

- (a) the Court erred in holding that the respondents had established a protectable right or goodwill in their concept: *“Your Beauty is My Concern”*.
- (b) the Court conflated the principles of passing-off and copyright.
- (c) the Order granted confers a monopoly over a concept or idea.
- (d) the Court placed undue reliance on social context; and
- (e) the Order was final in effect and therefore amounted to a finding of a clear right.

Overview:

[7] Having considered the detailed grounds for leave to appeal and submissions made by counsel on behalf of the parties, I am not persuaded that the requirements of section 17(1)(a)(i) or (ii) of the Superior Courts Act 10 of 2013 are satisfied for the reasons which follow.

[8] The order was expressly interim in purpose. It served to preserve the status quo and prevent the further dissemination of the impugned exhibition pending the outcome of Part B.

[9] Counsel for the applicants argued that, because the order effectively brought the exhibition to an end, the Court had granted a final interdict and thereby made a definitive finding of a clear right. That submission misconceives the nature of the relief. Although the order had a final practical effect in restraining the exhibition, it was interim in law and in purpose, **pending** the adjudication of Part B. Paragraphs (i) and (ii) of the order expressly state that the dissemination, presentation and selling of artworks under the theme “*Your Beauty is My Concern*”, including the exhibition itself, are interdicted **pending** the final determination of the relief sought in Part B. The judgment did not finally determine the underlying rights or questions of respondent’s authorship and ownership. The reference to a “clear right” signified that the respondents had demonstrated sufficient strength to justify temporary protection, not that their entitlement had been conclusively established.

[10] Had the exhibition not been halted, the respondents’ association with the creative concept would have been diluted, and the goodwill attaching to their work eroded. The preservation until a Court can make a final determination was necessary, for had it not been granted, the continued display and sale would have rendered the ultimate adjudication nebulous and academic. The order sought to be appealed against is only a holding measure, with final rights remaining open for judicial determination. The judgment did not finally determine the underlying rights or questions of authorship.

[11] Whilst paragraph 16 of the main judgment referred to the respondents having established a “clear right”, however, read in the full context, that expression was not intended as a final or absolute finding of right. The relief granted remained explicitly interim and subject to the final adjudication of Part B. I was satisfied that the respondents have established a sufficient association with the movement underlying the thematic theme of the exhibition, worthy of protection pending final determination.

[12] The Court’s use of the term “*clear right*” did not elevate the respondents’ case to that of a final declaration of the underlying substantive rights, but simply

acknowledged that on the papers before me, viewed holistically, the respondents had established a right deserving of temporary safeguarding. The right referred to the respondents' demonstrated association and goodwill in the thematic concept: *"Your Beauty is My Concern"*, sufficient to warrant its interim protection.

[13] The applicants also misconstrued the finding that the respondents had demonstrated public association, authorship, and reputational harm. Those findings were factual and evidential from the facts placed before me. In my view, it was sufficient to justify temporary relief and were not intended to determine the merits finally.

[14] The criticism that the Court relied on irrelevant socio-cultural context is unfounded. The context was considered only to illuminate the nature of the creative concept and the potential harm to reputation and authorship. Recognising that background did not displace legal principle, nor final determination on the matter. It contextualised the dispute within its proper social and artistic framework.

What is the purpose of the word "**pending**" in the 21 May 2025 Order?

[15] The use of the word "**pending**" in the order underscores that the relief granted in Part A was provisional and conditional upon a final determination of the rights in Part B. That further determination by this Court in due course would necessarily include the issues of authorship, ownership and entitlement from which any claims to royalties or derivative relief arise. To read it otherwise would render the word "**pending**" as tautologous in circumstances where I had included it because the status quo was being preserved until a further determination. To construe my finding on the underlying substantive rights as final would disregard the qualifying word '*pending*', which by its very nature negates finality.

[16] Counsel for the applicant submitted that in light of the fact that Part B is confined in the Notice of Motion to the quantification of royalties only, the Order which I granted must be read to accept that I had made a final determination of ownership. Consequently, it would not be open for the Court in due course to consider this issue, as it would be *res judicata*. This submission is misplaced, and it reads incorrectly into my Order. It misconstrues the nature of the Order and relief granted by me.

[17] It remains for this Court, in due course, to determine a final adjudication of the substantive rights and relief sought implicitly forming part of Part B. The inclusion of the word “**pending**” was purposeful, for if the order had been intended as a final determination of the underlying ownership rights, the word would not have appeared at all. Its reference and inclusion convey that the relief was provisional as a holding measure designed to preserve the position until the substantive issues are finally adjudicated. The applicant is at liberty to set the matter down for such determination should there be any absence or undue delay in its prosecution by the respondents.

Conclusion

[18] The applicants have not shown any reasonable prospect that another Court would reach a different conclusion, nor does the matter raise a discrete question of law or public importance warranting further consideration. In any event, the order sought to be appealed against is not of final effect and does not dispose of the issues between the parties. The appeal therefore does not lie as of right and falls outside the ambit of section 16(1)(a) of the Superior Courts Act. It is trite that appeals should not be entertained in a piecemeal fashion, particularly where the proceedings remain extant and the substantive rights of the parties are yet to be finally determined.

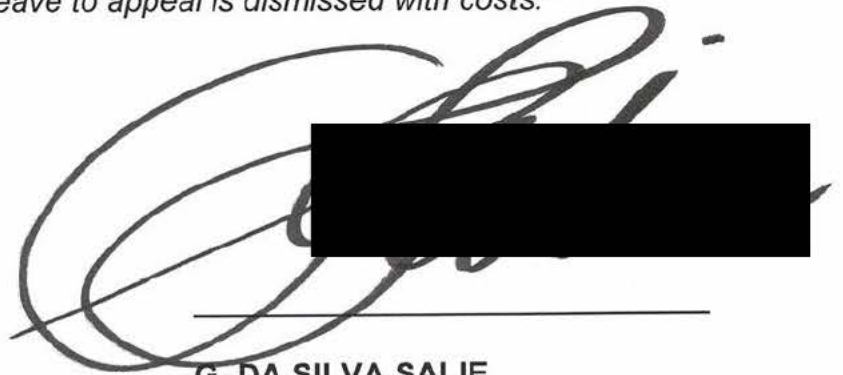
[19] The application for leave to appeal accordingly does not meet the threshold set by section 17(1) of the Superior Courts Act.

Order

[20] Wherefore I make the following order:

“(i) The late delivery of the application for leave to appeal is condoned.

(ii) The application for leave to appeal is dismissed with costs.”

A large, stylized handwritten signature in dark ink, which appears to be 'G. Da Silva Salie', is written over a black rectangular redaction box. The signature is fluid and cursive, with a large loop at the beginning.

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances

For Applicants: Adv. C Bester and Adv. T Sompa

Instructed by: England Slabbert Attorneys Inc.

For Respondents: Adv. N Hammond

Instructed by: Sithi & Thabela Attorneys