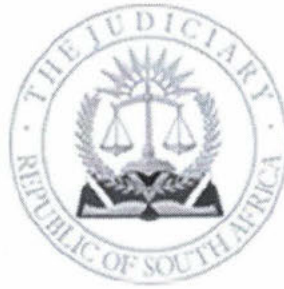


REPUBLIC OF SOUTH AFRICA



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

Case Number: 2023-068547

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

27 November 2025

DATE

SIGNATURE

In the matter between:

ALDORAFRICA (PTY) LTD

Applicant

And

JOHANNESBURG WATER (SOC) LTD

Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 27 November 2025.

LEAVE TO APPEAL JUDGMENT

Mudau, J

Introduction

- [1] Before this Court is an application for leave to appeal against the whole of the judgment of this Court and order, handed down on 20 August 2025. In that judgment, this court upheld the respondent's application for reconsideration in terms of Rule 6(12)(c) of the Uniform Rules of Court, set aside the order granted by Dlamini J on 18 July 2023, and dismissed the applicant's urgent application with costs on an attorney and client scale, including the costs of two counsel.
- [2] The applicant, Aldor Africa (Pty) Ltd, seeks leave to appeal to the Supreme Court of Appeal, alternatively to the Full Court of this Division, contending that the appeal would have reasonable prospects of success and that there are compelling reasons why the appeal should be heard, as contemplated in section 17(1)(a) of the Superior Courts Act 10 of 2013.
- [3] The respondent, Johannesburg Water (Soc) Ltd, opposes the application, arguing that the applicant has failed to meet the statutory threshold for the granting of leave to appeal.

Background and Factual Matrix

- [4] The factual background to this matter is comprehensively set out in the main judgment. In summary, the dispute between the parties concerns the applicant's liability for punitive charges and penalties imposed by the respondent for excessive effluent discharge, dating back to 2018. The applicant is a sweet manufacturing company that discharges industrial effluent into the respondent's system.
- [5] The applicant launched an urgent application in July 2023, seeking inter alia an order compelling the respondent to provide laboratory readings, to comply with what the applicant alleged was an agreement to waive charges and reverse punitive charges, and to refrain from terminating water supply. The application was granted by Dlamini J on 18 July 2023 in the respondent's absence.
- [6] The respondent subsequently brought an application for reconsideration under Rule 6(12)(c), which was heard over two years later on 20 August 2025. In a comprehensive judgment, this court set aside the order of Dlamini J, finding that material disputes of

fact existed which could not be resolved on the papers, that the applicant had failed to make out a proper case for the relief sought in its founding affidavit, and that the respondent's version, together with the evidence it presented, justified the setting aside of the original order.

Grounds of Appeal

- [7] The applicant's grounds of appeal, as detailed in the notice of application for leave to appeal and elaborated upon in the heads of argument, can be categorised as follows:

7.1. The court erred in not determining whether the respondent had made out a proper case for reconsideration under Rule 6(12)(c), including whether:

7.1.1. The respondent had demonstrated that its failure to appear at the hearing before Dlamini J was not due to culpable remissness;

7.1.2. The respondent had set the matter down appropriately as contemplated in Rule 6(12)(c); and

7.1.3. The respondent's failure to act with alacrity disentitled it to relief under the rule.

7.2. The court erred in not considering the applicant's application to strike out the affidavit of Mr Sipho Sibiya, the respondent's Manager of Governance and Legal, on the basis that it constituted hearsay evidence, and in failing to exclude such evidence.

7.3. The court misdirected itself in its treatment of the applicant's replying affidavit, either by failing to consider it adequately or by unduly restricting its scope, while simultaneously criticising the applicant for failing to materially challenge the respondent's version in reply.

7.4. The court erred in its characterisation of the agreement between the parties, particularly:

7.4.1. In finding that the applicant's case was that the agreement was "reduced to writing" when the applicant contended it was an oral undertaking captured in written minutes;

7.4.2. In finding that the conditions of the waiver agreement were "not detailed"; and

7.4.3. In refusing to place reliance on the minutes of meetings because they were not signed by the respondent's officials.

7.5. The court erred in finding that the applicant should have anticipated that there would be a "serious dispute of fact" incapable of resolution on affidavit, and in its application of the *Plascon-Evans* rule.

7.6. The court failed to provide adequate reasons for its findings, particularly in relation to what constituted "positive evidence" adduced by the respondent, and failed to properly consider and determine the various arguments raised by the applicant.

7.7. The court erred in finding that the applicant had not made out a proper case for the relief sought in its founding affidavit and that it had attempted to make out its case in the replying affidavit.

Legal Framework for Leave to Appeal

[8] Section 17(1) of the Superior Courts Act 10 of 2013 provides:

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

[9] The test for "reasonable prospects of success" is whether there is a sound, rational basis for the conclusion that there are prospects of success on appeal. The appeal must have a reasonable chance of succeeding; prospects that are remote or fanciful do not meet the threshold. (See *Ramakatsa v African National Congress* [2021] ZASCA 31 at para 10; *Smith v S* 2012 (1) SACR 567(SCA); *MEC for Health, Eastern Cape v Mkhitha* [2016] ZASCA 176.)

[10] Even where prospects of success are not strong, leave may be granted if there is some other compelling reason why the appeal should be heard. This may include instances where the matter raises issues of public importance, where there are conflicting judgments on the point, or where the judgment appealed against discloses a fundamental departure from established principles. (See *Capendale and Another v*

Municipality of Saldanha Bay [2014] ZAWCHC 3 (29 January 2014); *Zuma v Democratic Alliance* [2017] 4 All SA 726 (SCA).)

Evaluation of Grounds of Appeal

- [11] I have carefully reconsidered the judgment, the grounds of appeal advanced by the applicant, and the submissions of both parties. For the reasons that follow, I am not persuaded that the appeal would have reasonable prospects of success, nor that there exist compelling reasons why the appeal should be heard.

Reconsideration Application under Rule 6(12)(c)

- [12] The applicant contends that the court erred in not properly considering whether the respondent had met the requirements for reconsideration under Rule 6(12)(c). The applicant argues that the respondent failed to provide an acceptable explanation for its default, did not act with the required alacrity, and did not properly set the matter down for reconsideration.
- [13] The judgment, however, demonstrates a proper appreciation of the purpose and application of Rule 6(12)(c). At paragraphs 27-29 of the judgment, this court identified that the purpose of the rule is to afford a party against whom an order was granted in its absence an opportunity to be heard, thereby preventing a grave injustice. The court further recognised that a reconsideration application is, in essence, a hearing de novo, where the court considers the matter afresh with the benefit of argument and affidavits from all parties.
- [14] The respondent explained its absence, attributing it to an administrative error within its large organisation. The court was entitled to accept this explanation, particularly in the absence of any compelling evidence of wilful default or culpable remissness. The delay of approximately one month between the granting of the order and the launching of the reconsideration application was not inordinate in the circumstances, and the applicant has not demonstrated any prejudice suffered because of this delay.
- [15] In these circumstances, I am not persuaded that another court would find that the respondent was not entitled to seek reconsideration of the order granted in its absence.

The Hearsay Evidence Issue

- [16] The applicant vigorously contends that the court erred in not striking out the affidavit of Mr Sibiya as hearsay evidence. The applicant argues that Mr Sibiya, as Manager of Governance and Legal, had no personal knowledge of the facts in dispute and that his evidence should have been excluded in the absence of an application for its admission under the Law of Evidence Amendment Act 45 of 1988.
- [17] The respondent counters that as a manager in a large organisation, Mr Sibiya had access to the relevant documents and records and was competent to depose to an affidavit on behalf of the respondent. This approach is consistent with the practical realities of litigation involving large corporate entities or public bodies, where it may not be feasible for every individual with personal knowledge of aspects of a dispute to depose to affidavits.
- [18] The court was entitled to admit and consider Mr Sibiya's affidavit in these circumstances. Even if there were technical deficiencies in the form of the evidence, these would not necessarily be fatal to the respondent's case, particularly where, as here, the essential facts were supported by documentary evidence. I am not persuaded that another court would find that the admission of this evidence constituted a material misdirection justifying interference on appeal.

Treatment of the Replying Affidavit

- [19] The applicant contends that the court erred in its treatment of the replying affidavit, both by criticising the applicant for introducing new matter in reply while simultaneously finding that the applicant had failed to materially challenge the respondent's version.
- [20] The judgment demonstrates a careful and balanced approach to this issue. The court correctly recognised the established principle that a replying affidavit should not be used to make out a new case or to amplify the applicant's case in a material respect. (See *Minister of Environmental Affairs and Tourism v Phambili Fisheries* 2003 (6) SA 407 (SCA) at 439G-H; *Industrial Development Corporation of South Africa v Sooliman* 2013 (5) SA 603 (GSJ) at para 9.)
- [21] The court acknowledged that some new matter may be permissible in reply to address new issues raised in the answering affidavit, but found that the applicant had exceeded what was permissible under the circumstances. This was a factual finding open to the

court on the papers, and I am not convinced that another court would interfere with this assessment.

Characterisation of the Agreement and Assessment of Evidence

- [22] The applicant takes issue with the court's characterisation of the agreement between the parties and its assessment of the evidence, particularly the unsigned minutes of meetings. The judgment demonstrates a thorough examination of the evidence related to the alleged agreements. The court carefully analysed the minutes of the meeting of 13 December 2019, noting that they were not signed by the respondent's representatives, and considered the subsequent correspondence between the parties, which demonstrated that the applicant itself had sought formal confirmation of the alleged waiver on multiple occasions without success.
- [23] The court's finding that the applicant had not established the existence of a binding agreement to waive the charges was based on a holistic assessment of all the evidence, including the respondent's denial of such an agreement and the documentary evidence that contradicted the applicant's version. These were factual findings that were reasonably open to the court on the evidence, and I am not persuaded that another court would arrive at a different conclusion.

Disputes of Fact and Plascon-Evans Rule

- [24] The applicant challenges the court's finding that there were foreseeable disputes of fact that could not be resolved on the papers, arguing that no material disputes of fact arose because the respondent's denial came from a person without personal knowledge of the facts. The court correctly applied the principles governing the resolution of disputes of fact in motion proceedings. The *Plascon-Evans* rule, as reaffirmed by the Constitutional Court in *Democratic Alliance v Electoral Commission* 2022 (1) BCLR 1 (CC), requires that final relief in motion proceedings be decided on the facts stated by the respondent, together with the facts alleged by the applicant that are not denied, or denials that are not genuine or so far-fetched as to be rejected.
- [25] The court found that the respondent's denials were genuine and supported by evidence, and that the disputes of fact were material and not capable of resolution on the papers.

This finding was reasonably open to the court on the evidence, and I am not convinced that another court would interfere with this assessment.

Adequacy of Reasons

- [26] The applicant contends that the judgment failed to provide adequate reasons for its findings, particularly in relation to what constituted "positive evidence" adduced by the respondent. A reading of the judgment as a whole reveals that the court provided comprehensive reasons for its conclusions. The duty to provide reasons does not require a judgment to address every argument advanced by the parties, but rather to deal with the substantial points that are vital to the determination of the matter. (See *Vodacom (Pty) Ltd v Makate and Another* 2025 (10) BCLR 1174 (CC); [2025] 11 BLLR 1105 (CC) (31 July 2025) [at para 57].
- [27] The judgment identified the key issues in dispute, analysed the evidence relating to those issues, and provided reasoned conclusions. The reference to "positive evidence" must be understood in context as referring to the respondent's denial of the agreement, supported by documentary evidence such as the correspondence between the parties and the test results. When read as a whole, the judgment adequately explains the basis for the court's findings.

Compelling Reasons for Appeal

- [28] The applicant argues that even if the prospects of success are not strong, there are compelling reasons for the appeal to be heard, primarily based on the contention that the court failed to properly consider and determine the various arguments raised by the applicant.
- [29] While the applicant may be dissatisfied with the outcome of the case, this does not in itself constitute a compelling reason for an appeal. The judgment demonstrates a proper engagement with the material issues in the case, and the applicant has not identified any issue of legal principle of general importance, any conflict between judgments, or any other factor that would constitute a compelling reason for the appeal to be heard.

Conclusion

[30] Having considered all the grounds of appeal advanced by the applicant, I am not satisfied that the appeal would have reasonable prospects of success. The judgment of this court reflects a careful and balanced assessment of the evidence and the applicable legal principles. The findings and conclusions reached were reasonably open to the court on the evidence, and I am not persuaded that another court would arrive at a different conclusion. Nor am I satisfied that there are any compelling reasons why the appeal should be heard. The matter turns largely on its own particular facts and does not raise any issues of legal principle of public importance.

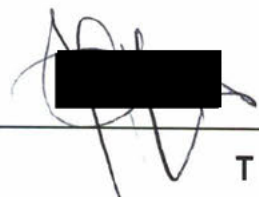
[31] In the result, the application for leave to appeal falls to be dismissed.

Order

[32] I make the following order:

[33] The application for leave to appeal is dismissed.

[34] The applicant is to pay the costs of this application, including the costs of two counsel where applicable.



T P MUDAU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicant : Adv G.I Hulley SC
: Adv N. Ralikhuvhana

Instructed by : Katlego Ralikhuvhana Mokgola Inc

For the Respondent : Adv T Seboko SC
: Adv Niresh Loopoo

Instructed by : Sibusiso Masondo Incorporated

Date of hearing : 24 November 2025

Date of Judgement : 27 November 2025