

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 107022/2025

DATE: 16-10-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES : YES / NO
(3) REVISED ✓

In the matter between

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NATIONAL EMPLOYERS' ASSOCIATION
OF SOUTH AFRICA

1ST APPLICANT

SAKELIGA NPC

2ND APPLICANT

AND

MINISTER OF EMPLOYMENT
AND LABOUR

1ST RESPONDENT

DIRECTOR-GENERAL OF

2ND RESPONDENT

THE DEPARTMENT OF EMPLOYMENT AND LABOUR

COMMISSION FOR EMPLOYMENT

3RD RESPONDENT

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J U D G M E N T

MOSHOANA, J: Having taken into consideration the fact that
this matter is, as Mr D'Oliveira submitted, of national

importance, I was initially minded to reserve my judgment in order to allow the Constitutional Court an opportunity to make a decision but the circumstances seem not to permit. For practical reasons, it is pointless for this Court to make a decision whilst the decision of the Constitutional Court pends on the same relief. That notwithstanding, both counsel seem to be of the view that this application must be determined without any further delays.

Before me is an application seeking leave to
10 appeal the judgment and order made by this Court on 28 August 2025. It is unnecessary for the purposes of the present judgment to detail the facts of this case since they have been set out in some relevant details in the impugned judgment. In an application of this nature, the Court is guided by the provisions of section 17 of the Superior Court Act. Out of that section, there are two bases upon which an application for leave to appeal may be granted.

This Court must form an opinion as to whether there are prospects that another court would not may come
20 to a different conclusion. Secondly, the Court must also consider whether there are compelling reasons why the appeal should not be heard. On compelling reasons requirement, the section provides, as an example, the issue of conflicting judgments.

Now, in considering this application, the first

question that this Court must look into is whether another court would come to a different conclusion. Mr Nalane made a submission to the effect that the order that this Court made is not final in effect on the basis that there is still a pending part B. In retort, Mr D'Oliveira, submitted with reference to the *Knox Darby* case that a refusal to grant an interim interdict is appealable.

In reply, reference was made to the Constitutional Court decision of *Lebashe*. Without necessarily deciding the
10 appealability issue, what is applicable to this matter is that there is a part B application. That part B application has the effect, if it is determined, either granted or refused, to affect the determined part A. This part A, whether part B is refused or granted, Its route or effect will end.

The granting or refusal of part B, practically, would mean the end of part A. Without deciding the question whether refusing an interim interdict is appealable or not, the approach I take is the practical effect of an appeal in relation to this matter.

20 My take is that part B is having huge effect on this matter, and it shall be pointless for this Court if the leave to appeal is granted, because the Court of appeal would still ask the question about the part B given its impact on any possible order the appeal Court may make, being that, if it is for the practical benefit of the applicant to grant an interim

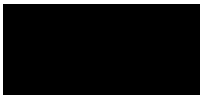
interdict. But that interdict would only pend the outcome of part B.

Now, the most important part would be part B, because that is where all these issues would be dealt with. My opinion is that another court will not come to a different conclusion. Secondly, the issue of compelling reasons. Mr D'Oliveira made reference to case law that suggests that an interdict may be issued against an exercise of statutory power. He suggested that this Court held otherwise, and as
10 a result, there are conflicting decisions. I do not think that that is the case.

This Court stated that one may obtain an interdict against an exercise of statutory power for as long as one can show the requirements. So there is no conflict that requires resolution by a appeal court. For that reason, I do not form an opinion that there are compelling reasons for this appeal to be heard. The SCA had pointed out quite clearly that the compelling reasons would also take into account the prospects of success on appeal. Having found that there are
20 no prospects of success, I take a view that this other requirement has not been satisfied.

For all the above reasons, I make the following order. **The application for leave to appeal is refused, I make no order as to costs.**

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MOSHOANA, J

JUDGE OF THE HIGH COURT

DATE: 10 NOVEMBER 2025
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TRANSCRIBER'S CERTIFICATE

NEASA//MINISTER OF FINANCE AND LABOUR

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between the parties stated above:

CASE NUMBER	: 107022/2025
RECORDED AT	: PRETORIA
DATE HELD	: 16-10-2025
NUMBER OF PAGES	: 5

TRANSCRIBER'S NOTES / PROBLEMS EXPERIENCED

TRANSCRIBER: ROXANNE BECKER

DATE COMPLETED: 7-11-2025



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