



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

CASE NO: 27441/2020

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

17 November 2025

Date

K. La M Manamela

In the matter between:

BOTTOM LINE SOLUTIONS (PTY) LTD

Applicant

TRADING AS BLS PORTCO SA

and

THE COMMISSIONER FOR THE SOUTH

Respondent

AFRICAN REVENUE SERVICE

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of the judgment is deemed to be 17 November 2025.

**JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)**

Khashane Manamela, AJ

Introduction

[1] This is an application for leave to appeal ('Leave to Appeal') the judgment of this Court dismissing a review application brought by Bottom Line Solutions (Pty) Ltd trading as BLS Portco SA ('BLS') to set aside a demand by the South African Revenue Service ('SARS') for payment in respect of liability for customs duty, penalties and other charges ('the Review'). The liability emanated from the role played by BLS as an agent in terms of section 99(2) of the Customs and Excise Act 91 of 1964 ('the CEA') regarding the deemed diversion of goods instead of being exported as declared. The Review, opposed by SARS, was brought in terms of the common law and the Promotion of Administrative Justice Act 3 of 2000.

[2] The judgment in the Review was handed down on 12 May 2025 dismissing the Review and holding BLS liable for payment of the costs thereof, including those of two counsel ('the Order').

[3] The Leave to Appeal sought against the judgment or the Order was launched on 2 June 2025 on various grounds. Its hearing was virtual or remotely on 11 September 2025. Mr JM Barnard appeared for BLS and Mr J A Meyer SC appeared for SARS, as it was the case in the Review. This judgment was reserved.

BLS's grounds of appeal

[4] The Leave to Appeal was sought, initially, to the Supreme Court of Appeal ('the SCA'), alternatively a full court of this Division, but by the conclusion of the hearing its intended destination was firmly stated as the SCA.

[5] The grounds of appeal were stated as follows in the Leave to Appeal and I am quoting same verbatim:

[5.1] ‘Error in not finding that on the facts, the bill of entry processed by the applicant was superseded by the events following the processing of the document and acceptance thereof by the respondent’;

[5.2] ‘Error in not finding that applicant was not an exporter as defined in the Customs and Exercise Act, 91 of 1964 (“the CEA”) and therefore could not be held liable and the related aspect that agency and potential liability must be co-terminated with the mandate’;

[5.3] ‘Erroneous finding and application of the facts and the law regarding the finding that the applicant’s true principal was a foreign principal, Intanet’;

[5.4] ‘Error in not finding that appointment of the agent (or giving out to be the agent) and the proven liability of the principal are a *sine qua non* for holding the agent liable and the related failure to be transparent for purposes of section 44 of the CEA’;

[5.5] ‘Error in expanding the duties and obligations of a clearing agent beyond the scope of a clearing agent’;

[5.6] ‘Erroneous finding that the applicant is not exempted from liability in terms of section 99(2) of the CEA’;

[5.7] ‘Erroneously not considering the forfeiture claim’, and

[5.8] ‘Erroneous granting of costs’.¹

[6] BLS, states that for the abovementioned reasons or grounds there exists a reasonable prospect that a court sitting at the appellate level may come to a different conclusion. Further, that the judgment has a major impact on the way clearing agents conduct their business, which amounts to hundreds of thousands of road shipments, excluding those by sea and air, processed by SARS monthly. The judgment would impact the clearing agents in that they would,

¹ Application for leave to appeal (‘Leave to Appeal’) dated 2 June 2025, CaseLines (‘CL’) W41-46.

thenceforth, have to adjust their verification conducted on documentation received and submitted to SARS, which would have an adverse knock-on effect on commercial dealings and SARS turnaround time in the processing of documentation. And similar effect would, possibly, be felt by regional and international clearing agents, as customs authorities worldwide are said to align customs legislation to the revised Kyoto Convention. Also, leave to appeal has already been granted by this Division to the SCA in another matter concerning issues very similar to those in this matter.²

Submissions on behalf of BLS

[7] BLS says the Leave to Appeal is founded on the provisions of section 17(1)(a)(i) and (ii), read with those of section 17(6), of the Superior Courts Act 10 of 2013 ('the Act'). The detailed grounds of appeal, quoted above, are detailed in the Leave to Appeal.

[8] Submissions by Mr JM Barnard, counsel for BLS, some of which are referred to next, are to the effect that individually and holistically the grounds or aspects raised in the Leave to Appeal point to existence of reasonable prospects that an appeal court would come to a different conclusion in respect of BLS' liability on the facts of this matter. His submissions include the following:

[8.1] should a court of appeal agree that the detention of the goods by SARS' Customs Tactical Intervention Unit ('TIU') on 12 October 2015 under section 88(1)(a) of the CEA, after BLS had processed the relevant document, 'superseded the document and anything done based on that document', the issue of BLS' liability - on an extended basis as an agent – would fall away as the goods were unlawfully removed from the warehouse, irrespective of the role played by BLS;

² *QI Logistics v The Commissioner for the South African Revenue Service*, Case No: 35089/2020 per Davis J.

[8.2] although BLS processed the material document, SARS failed to inform BLS that the impugned goods have been detained and the declaration ought to have been withdrawn or SARS ought to have cancelled or withdrawn the document from its system to prevent reliance thereon;

[8.3] the issue of forfeiture in terms of section 88(2)(a)³ of the CEA was not considered in the judgment. Forfeiture, even if the argument appearing above does not find favour with an appeal court, would convince such court otherwise as it effectively constitutes expropriation worthy of evaluation in the context of South Africa's constitutional dispensation viewed against SARS' powers to impose punitive measures under the CEA in the form of penalties and forfeiture. But, the latter is imposed by SARS for seizure or loss of goods due to intentional or serious violations of the CEA.⁴ Forfeiture is applicable to persons who dealt with the impugned goods contrary to the provisions of the CEA and in this matter there is no proven link between BLS and the offence or contravention of the CEA. And holding BLS liable on an extended basis for liability invokes different considerations for forfeiture. Forfeiture constitutes a significantly severe or draconian punishment than a penalty and ought to be imposed without any caprice and against the backdrop of application of the rules of natural justice or requirements of section 33 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'),⁵ for a just and fair administrative action.⁶ The power to forfeit infringes on the right to property, an enshrined human right, under section 25 of

³ Par [22] below and footnote 25 on section 88(2)(a) of the CEA.

⁴ *BP Southern Africa (Pty) Ltd v Commissioner for the South African Revenue Service* (2021/49805) [2024] ZAGPPHC 1 (12 January 2024) [44]

⁵ *Deacon v Controller of Customs and Excise* 1999(2) SA 905 (SE).

⁶ *Formalito (Edms) (Bpk) v Die Kommissaris Van Die Suid Afrikaanse Inkomstediens* 2003 JDR 0384 (T); *Commissioner of the South African Revenue Service v Formalito (Pty) Ltd* (328/04) [2005] ZASCA 135; [2006] 4 All SA 16 (SCA); 2005 (5) SA 526 (SCA); 67 SATC 251 (31 May 2005).

the Constitution and, thus, ought to be resorted to sparingly and only when all else has failed.

[9] It is submitted that there are good prospects that a court of appeal would: (a) dismiss the forfeiture claim; (b) find insufficient the grounds under which BLS was held liable for duties, or (c) find that BLS is protected in terms of section 99(2)(a) of the CEA. Counsel, also, reiterated the fact that, my brother Davis J, granted leave to appeal to the SCA in another matter with similar facts and dealing with the extended liability of clearing agents, referred to above.⁷ And the perceived wider impact of the judgment subject to the Leave to Appeal on the business of clearing agents operating under the CEA. The Leave to Appeal ought to succeed for an appeal before the SCA, as provided under section 17(6)⁸ of the Act, due to the facts and circumstances of this matter, as well as the wider impact of the judgment and Order, counsel's submissions conclude.

Opposition to the Leave to Appeal (and submissions on behalf of SARS)

[10] It is SARS' view that BLS has not met the stringent test for leave to appeal (i.e. 'reasonable prospect of success') required under section 17(1)(a)(1) of the Act, held by the SCA in *MEC for Health, Eastern Cape v Mkhitha and Another*⁹, to be affordable to matters 'truly [having] a reasonable prospect of success'.¹⁰ There is also no other compelling reason for leave to appeal to be granted, it is submitted.

[11] Submissions by Mr J A Meyer SC on behalf of SARS, for the dismissal of the Leave to Appeal include the following:

⁷ Footnote 2 above.

⁸ Par [18] below on section 17(6) of the Act.

⁹ *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016) ('*MEC for Health, Eastern Cape v Mkhitha*').

¹⁰ *MEC for Health, Eastern Cape v Mkhitha* [16]-[17], quoted in detail in par [16] below.

[11.1] BLS – in the Review - did not deny the assertion by SARS that ‘[t]he issue before this Court is thus whether or not the [BLS’] liability has ceased on account of it acting on behalf of a foreign principal’, and, thus, SARS’ assertion stands as admitted;¹¹

[11.2] it was submitted on behalf of SARS that on interpretation and application of sections 99(2)(a) and 64B(5)-(6) of the CEA that a finding of liability on the part of BLS (i.e. in favour of SARS) for payment of the duty, VAT, penalties, interest and forfeiture amount - on the basis set out in submissions in the Review - would fully dispose of the dispute between the parties through the dismissal of the Review, notwithstanding the merit of any of BLS’s other arguments.¹² It is submitted that the same issue, equally, is dispositive of the Leave to Appeal, as it is addressed in the judgment,¹³ by the finding that BLS acted for a ‘foreign principal’, urged upon by SARS on the basis of section 99(2)(a), read with section 64B(5)-(6), of the CEA. The relationship between BLS and Intanet, as well as the instruction by BLS was well documented in the Review, it is submitted on behalf of SARS.¹⁴ The documents, it is further submitted for SARS, clearly established that BLS acted on behalf of Intanet, a foreign principal, and was always fully aware of this position, including the fact that Atlantic Impex was simply the intermediary or conduit for the mandate or instructions. It was both legally and factually untenable to place Atlantic Impex in the position of the principal, as envisaged by sections 64B and 99 of the CEA.

¹¹ SARS’ answering affidavit (‘AA’) in the Review par 7, CL C356; C515.

¹² SARS’ further supplementary heads of argument par 2, CL E110.

¹³ Judgment pars [66] to [68] under the rubric ‘When does the involvement or role of a clearing agent ends (including BLS’ case of limited mandate)’ and in par [79] under the rubric ‘Liability of BLS as an agent for obligations imposed on its principal’, CL 000-26 and 30.

¹⁴ BLS’ founding affidavit (‘FA’) pars 8.12 to 8.14, CL C23; FA annexure ‘FA5’, CL C76 and C77; FA annexure ‘FA6’, CL C83, and AA annexure ‘AA17’, CL 452.

[11.3] regarding the criticism of the judgment or the Order in not having applied the principle from *Biowatch Trust v Registrar, Genetic Resources, and Others*¹⁵ to absolve BLS of liability towards costs of the Review, counsel submitted that the Review was not ‘constitutional litigation’. There was simply no basis advanced by BLS for such finding and courts sitting at the appellate level, generally, are reluctant to override cost orders by lower courts. Therefore, absent specific reasons requiring a deviation therefrom, the Court did not err in applying the convention that a successful party’s costs ought (i.e. SARS) to be borne by the unsuccessful party (i.e. BLS).

[12] Counsel for SARS concluded that, BLS has no prospect of success on appeal, ‘even if for purposes of [the Leave to Appeal] it is accepted that, based on any of the other grounds, there may be reasonable prospects of success (which is denied)’. And, therefore, the Leave to Appeal ought to be dismissed with costs, including costs of senior counsel on Scale C.

Applicable legal principles

[13] The legal principles applicable to the issues determined in the judgment sought to be appealed are fully set out therein and it is not necessary to repeat same here. And from the submissions by counsel, summarised above, some of the legal principles applicable to the issues in this Leave to Appeal appear. But, central to applications for leave to appeal are the provisions of the Superior Courts Act 10 of 2013 (i.e. the Act).

[14] Section 17(1) of the Act is apposite in this regard and reads as follows in the material part:

(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

¹⁵ *Biowatch Trust v Registrar, Genetic Resources, and Others* 2009 (6) SA 232 (CC).

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

[15] The test for leave to appeal was accentuated in *Democratic Alliance v President of the Republic of South Africa and Others*,¹⁶ by a full court of this Division as follows:

[4] The test as now set out in s 17 constitutes a more formidable threshold over which an applicant must engage than was the case. Previously the test was whether there was a reasonable prospect that another court might come to a different conclusion... The fact that the Superior Courts Act now employs the word “would” as opposed to “might” serves to emphasise this point. As the Supreme Court of Appeal said in *Smith v S* 2012 (1) SACR 567 (SCA) at para 7:

‘More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must in other words be a sound, rational basis for the conclusion that there are prospects of success on appeal.’

[5] ...

[6] The second basis upon which leave should be granted is that there is a compelling reason, that is apart from the existence of conflicting judgments on the matter under consideration which require clarification from a higher court. In essence the compelling reason is whether the case raises issues of significant public importance.

[16] A few years earlier, the SCA had aptly elucidated the test in *MEC for Health, Eastern Cape v Mkhitha* when it held that:

[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal *would* have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.

[18] In this case the requirements of 17(1)(a) of the Superior Courts Act were simply not met. The uncontradicted evidence is that the medical staff at BOH were negligent

¹⁶ *Democratic Alliance v President of the Republic of South Africa and others* (21424/2020) [2020] ZAGPPHC 326 (29 July 2020) (*coram*: Mlambo JP (as he was then), Davis JP and Molefe J(as she was then)).

and caused the plaintiff to suffer harm. The special plea was plainly unmeritorious. Leave to appeal should have been refused. In the result, scarce public resources were expended: a hopeless appeal was prosecuted at the expense of the Eastern Cape Department of Health and ultimately, taxpayers; and valuable court time and resources were taken up in the hearing of the appeal. Moreover, the issue for decision did not warrant the costs of two counsel.

[footnote omitted]

[17] Section 17(5) of the Act affords a court seized with an application for leave to appeal a discretion to limit the issues on appeal,¹⁷ as explained by the author of *Erasmus: Superior Court Practice*:¹⁸

Leave to appeal may be granted on all or some of the grounds relied on. If leave to appeal is granted on limited grounds only, a respondent is not precluded from relying on such other defences or answers as might be available to it. A full court of a division of the High Court, being the forum hearing the appeal, is not empowered to entertain grounds of appeal in respect of which leave to appeal was refused.¹⁹

[footnotes omitted]

[18] As to the location of the correct destination of appeals, sections 17(6) of the Act provides a useful aid as to when to grant leave to a full court of a Division or the SCA as follows:

(a) If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-

(i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision,

¹⁷ *Dr Maureen Allem Inc v Baard* 2022 (3) SA 207 (GJ) (12 August 2021), *per* Engelbrecht AJ, [53], [61], [66].

¹⁸ DE van Loggerenberg, *Erasmus: Superior Court Practice* (Service 26, Jutastat e-publications May 2025) ('*Erasmus: Superior Court Practice*').

¹⁹ *Erasmus: Superior Court Practice* RS 25, 2024, D1 Rule 49-6B.

in which case they must direct that the appeal be heard by the Supreme Court of Appeal.

[19] The above legal principles, obviously, are not the only legal principles finding application to applications for leave to appeal, but represent the cardinal ones for purposes of this Leave to Appeal. They will provide useful aids in the discussion to follow.

Grounds of appeal and submissions (for and against the granting of leave to appeal) - discussed

General

[20] BLS, as quoted above, raised various grounds for its intended appeal against the judgment and/or the Order.²⁰ SARS - in its opposition to the Leave to Appeal on the basis of lack of merit – considers the matter capable of disposition from a narrow angle, as with the Review.²¹

[21] I agree with the view by counsel for SARS that the various issues raised as grounds of appeal have been correctly addressed in the judgment. I see no reason for repeating my reasons for the Order or judgment, as ‘an appeal does not lie against the reasons for judgment but against the substantive order made by the court a quo’.²² I searched in vain for merit in any of the grounds, save on the issue of forfeiture.

[22] BLS criticises the judgment for not dealing with the issue of forfeiture in terms of section 88(2)(a)²³ of the CEA. But, forfeiture was not raised as an issue to be dealt with separately by BLS. It, consequently, was not dealt with as such by SARS. It only formed part of the liability imposed on BLS by SARS in terms of SARS’ letter of demand (‘LOD’) of 05

²⁰ Par [5] above.

²¹ Par [11] above.

²² *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole* 2013 (5) SA 183 (SCA) [39], per Brand JA, relying on *Western Johannesburg Rent Board and Another v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A) at 354-355, per Centlivres JA. See also *President of the Republic of South Africa and Another v Tembani And Others* 2025 (2) SA 371 (CC) [73]-[74], per Rogers JA.

²³ Par [8.3] above.

September 2016 in the amount of R2 164 136 (of the total stated as R3 688 458.21).²⁴ Also, no reference was made to the underlying penal provisions in terms of section 88(2)(a)²⁵ of the CEA. This provision now features prominently in the Leave to Appeal.

[23] BLS, in its amended notice of motion sought a review and set aside of the LOD whose composite element included forfeiture.²⁶ Perhaps, due to the fact that the amount imposed as forfeiture penalty (i.e. R2 164 136) is substantial and the drastic nature of this form of punishment, as submitted by counsel for BLS in this Leave to Appeal,²⁷ the issue warranted particular attention. Although, not necessarily a concession as to the merit of the Leave to Appeal, counsel for SARS during the hearing appeared alive to the fact that leave to appeal may be granted on the limited basis of the forfeiture issue.

[24] I do not think that the forfeiture issue can be effectively and reasonably carved out from the rest of the issues or even the composite liability imposed by SARS in terms of the LOD. It is inextricably weaved in the other issues or, perhaps, most of the issues.

Conclusion and Costs

[25] What I have stated above regarding forfeiture satisfies me that the appeal intended by BLS would have a reasonable prospect of success.²⁸ I also consider that the judgment appealed against involves ‘a question of law of importance’, due to its general application to clearing

²⁴ Judgment par [18], CL 000-7 and par [33], CL 000-13.

²⁵ Section 88(2)(a) of the CEA reads:

‘(i) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act contained, demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value whether or not the goods in question are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.’

²⁶ Judgment par [24], CL 000-9.

²⁷ Par [8.3] above.

²⁸ Section 17(1)(a)(i) of the Superior Courts Act. See pars [14]-[16] above.

agents in their daily business activities that the appeal ought to be heard by the SCA, as opposed to a full court of this Division. I also associate with the view that perhaps the fact that there is another appeal pending from that level with similar or comparable issues,²⁹ that destination for the appeal is apposite.

[26] Consequently, I would grant BLS leave to appeal to the Supreme Court of Appeal. The costs of this Leave to Appeal shall be costs in the appeal.

Order

[27] In the premises, I make the following order:

- a) leave to appeal to the Supreme Court of Appeal is granted, and
- b) costs of this application for leave to appeal is to be costs in the appeal.


Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : 11 September 2025

Date of Judgment : 17 November 2025

Appearances:

For the Applicant : Mr JM Barnard
Instructed by : VFV Attorneys, Pretoria

For the Respondent : Mr J A Meyer SC
Instructed by : Klagsbrun Edelstein Bosman Du Plessis Inc, Pretoria

²⁹ Pars [6] and [9] above.