

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number: 2024-133414

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

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DATE

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SIGNATURE

In the matter between:

**PRETORIA HIGH SCHOOL FOR GIRLS:  
SCHOOL GOVERNING BODY**

Applicant

and

**THE GAUTENG DEPARTMENT OF EDUCATION  
AND SIX OTHERS**

Respondents

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 17 December 2025.*

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**JUDGMENT**

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**MOSHOANA, J**

## Introduction

[1] An interlocutory application is an application made in the midst of an ongoing proceedings aimed at resolving a specific procedural issue. Such an application does not resolve the main issues in the case. There is no dispute that involved in the impugned judgment was a rule 30A application wherein the applicant contended that the respondents have failed to comply with rule 53(1). Indisputably, a rule 30A application is interlocutory in nature. The applicant is seeking leave to appeal the interlocutory order made by this Court. It is apposite at this stage to reverberate what the erudite Harms AJA, as he then was, felicitously stated in *Zweni v Minister of Law and Order of the Republic of South Africa (Zweni)*<sup>1</sup>. He said:

“5 The jurisdictional requirements for a civil appeal emanating from a provincial or local division sitting as a court of first instance are twofold:

1. The decision appealed against must be a “judgment or order” within the meaning of those words in the context of s 20(1) of the Act; and
2. The necessary leave to appeal must have been granted, either by the court of first instance; or, where leave was refused by it, by this Court.

6 Leave is granted if there is reasonable prospects of success. So much is trite. But, if the judgment or order sought to be appealed against does not dispose of all the issues between the parties the balance of convenience must, in addition, favour a *piecemeal consideration of the case*. In other words, the test is then “*whether the appeal – if leave were given – would lead to a just and reasonably prompt resolution of the real issue between the parties*” (footnote omitted).

The issue whether a decision is an appealable “judgment or order” is complicated by a number of factors and has been the subject of a large number of judgments over many years. In each instance the court had to consider its appellate jurisdiction in the light of the then enabling statute, but

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<sup>1</sup> 1993 (1) SA 523 (A).

often general observations enunciated in other contexts were grafted onto those provisions (footnote omitted).

- [2] That said, in the present application, this Court must ask and answer the question whether the appeal would lead to a just and reasonably prompt resolution of the real issue between the parties. It is worth mentioning at this embryonic stage that a success on appeal would simply mean that the respondents would be compelled to comply with rule 53(1)(b). Such an order will have less to do with the already launched review application. Not an ounce of the review application will be resolved by the appeal. The parties would be directed back to the high court for the hearing of the appeal. So much for the piecemeal adjudication of the dispute between the parties. Clearly, the interests of justice shall not be dutifully served thereby.
- [3] This Court must mention, in passing, that other than an appeal, other avenues are open for the applicant to have access to the copy of the Report. For instance, invoking the provisions of rule 35(12). As it shall be demonstrated below, the appeal shall not lead to a just and reasonably prompt resolution of the case. On the contrary, it shall simply serve to put a spoke on the wheels of a review application. Just to demonstrate the point, in order to prosecute a review of the exercise of statutory power (section 9 of the GDA), the applicant does not require a copy of the Report. To this, counsel for the applicant has already conceded. Assuming that a review Court finds that the power was exercised unlawfully, as alleged, everything else that followed, inclusive of the Report will be set aside.
- [4] In opposing the present application, the respondents contended that the rule 30A in this instance is not appealable. The applicants strongly contends otherwise. To my mind, this issue of the appealability of the interlocutory order is dispositive of the whole application serving before Court. For that reason, I propose to deal with that issue first.

*Is the rule 30A order appealable or not?*

- [5] In my view, it is wrong to ask only the general question whether rule 30A orders are final and appealable. The fact that in *Helen Suzman*, the Constitutional

Court, addressed an issue emanating from a rule 30A and rule 6(11), order does not axiomatically provide authority to the proposition that all rule 30A interlocutory orders are appealable. In *Helen Suzman*, the majority in accepting jurisdiction stated the following:

“[11] The question whether and under what circumstances the JSC must divulge a recording of its post-interview deliberations under rule 53 is of great import. *There are reasonable prospects of success. Thus it is in the interest of justice that leave to appeal be granted.*”

- [6] It is clear that what prompted the grant for leave to appeal was the prospects of success and the interest of justice. The Court did not specifically consider the question whether a rule 30A order was appealable or not. However, what sharply distinguishes the facts of *Helen Suzman* from the facts of this case is that, in *casu*, the applicant is not seeking to be provided with a record of the deliberations that may have led to the compilation of the Report. In *Helen Suzman*, the deliberations in question led to the non-recommendation of a judicial candidate (decision). That non-recommendation (decision) was impugned and not the deliberations (part of the record of proceedings) by way of a judicial review.
- [7] The applicant placed heavy reliance on the judgment of *Bridon International GmbH v International Trade Administration Commission and Others (Bridon)*<sup>2</sup> in advancing a proposition that the rule 30A order is appealable. In this case, the Commission refused to disclose what it considered to be confidential information. In order to compel the Commission to disclose what it considered to be confidential information, Casar launched what was simply termed in the judgment as an interlocutory application. Different from the present matter, Preller J granted the interlocutory order that was sought. Bridon as a party whose confidential information was to be disclosed sought leave to appeal since it considered the confidentiality regime set out in the court order of Preller J not to be adequate protection of its confidential information. Such leave to appeal was granted. Unlike in the present matter, the issue on appeal there,

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<sup>2</sup> 2013 (3) SA 197 (SCA)

was about the confidentiality regime set out in the Preller J order. The question of the appealability of the order never arose nor was it determined. In upholding the order of Preller J, the erudite Brand JA writing for the majority stated the following:

“[32] In short, I agree with the sentiments expressed by Preller J in the court a quo that a ban on disclosure of Bridon’s confidential information will effectively deprive Casar of a fair hearing in the main application.

[8] Of significance, Casar sought an order reviewing and setting aside the Commission’s decision to recommend the continued and increased duties to be imposed on its exports and the Minister’s decision to accept and implement that recommendation. Bridon was not a party to the review application. Its interlocutory application was prompted by the disclosure of its confidential information. In my considered view, the *Bridon* case is distinguishable from the present case. Although the application of Bridon was labelled an interlocutory application, in truth, it was an application launched by Bridon with a view to protect its confidential information to be disclosed in a case where it was not a party. It became an ‘interlocutory application’ simply because Bridon attacked an order made in the midst of litigation *inter partes*, in the circumstances where Bridon was an affected non-party.

[9] In addressing the important aspect of appealability, the applicant only addresses the issue of whether the decision is final in effect and whether the interests of justice require that a reversal opportunity be allowed. Regrettably, the question of appealability does not only rest on those two legs (final judgment and the interest of justice). When regard is had to the applicable *Zweni* test outlined above, an additional question is that of an appeal disposing of issues in the main matter. In the recent judgment of *MEC for Economic Development, Gauteng and Another v Sibongile Vilakazi and others (Vilakazi)*<sup>3</sup>, Smith JA writing for the majority, reaffirmed the *Zweni* test requiring disposition of the issues in the main case. With absolute perspicacity, the learned Smith JA said:

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<sup>3</sup> (783/2023) [2024] ZASCA 126 (17 September 2024)

“[25] Applying these legal principles to the facts of this matter, there can, in my view be little doubt that the order is appealable. First, as I said earlier, the judgment purports to make final pronouncements regarding virtually all the issues that will fall for decision in the review application. These relate not only to the rationality of the MEC’s decision but also her *bona fides*. Moreover, a punitive costs order was made against her based on those findings. *The judgment thus has the effect of disposing of a substantial portion of the relief sought in Part B of the notice of motion.*”

[10] Smith JA cited with approval the earlier judgment of the Supreme Court of Appeal in *Government of the Republic of South Africa and others v Von Abo (Von Abo)*<sup>4</sup> where the SCA summarised the approach regarding appealability as follows:

“It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the rights of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice.”

[11] Flowing from the above, it is perspicuous that there is bouquet of issues to be considered in determining the appealability of an order.

[12] Similar sentiments were expressed by the Constitutional Court in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and others (Lebashe)*<sup>5</sup> where, it with absolute sagacity, expressed the law to be:

“In deciding whether an order is appealable, not only form of the order must be considered, but also, and predominantly, its effect. Thus, an order which appears in form to be purely interlocutory will be appealable if its effect is such that *it is final and definitive of any issue or portion thereof in the main action*. By the same token, an order which might appear, according to its

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<sup>4</sup> 2011 (5) SA 262 (SCA).

<sup>5</sup> 2023 (1) SA 353 (CC).

form, to be *finally definitive in the above sense may, nevertheless, be purely interlocutory in effect.*”

[13] With considerable regret, there is no merit in a submission made by the applicant in its heads of argument, to the following effect:

“3.2.2 The effect of the judgment, if not reversed, will be to deprive the Applicant of sight of the very Report it seeks to review (let alone the very Report that formed the basis of the MEC’s decision to implement the Report, which the Applicant also seeks to review). That is about as final as final gets.”

[14] This submission, inaccurately place premium on the fact that, the Report formed the basis of the alleged MEC’s decision. As *Lebashe, Von Abo and Vilakazi* states it, the finality contemplated is one that is dispositive of any issue or portion of the main action. The effect of the impugned order is simply that the respondents did not fail to comply with the provisions of rule 53(1)(b). Regrettably, the impugned order is incapable of being elevated to the level of privation of the glimpse of the Report. In order to demonstrate the point fully, it is necessary to regurgitate the text of rule 53(1)(b) in this judgment. It states:

“(b) *calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to despatch, within 15 days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as the magistrate, presiding officer, chairperson or officer, as the case may be is by law required or desires to give or make, and to notify the applicant that such magistrate, presiding officer, chairperson or officer, as the case may be has done so.*”

[15] The fact that this Court concluded that the above rule was complied with, particularly in the circumstances where the respondents were not called upon to despatch the Report, hardly finally and in a definitive sense dispose of any issue in the review.

[16] Regarding the interests of justice, the narrative that the impugned order has the effect of the review application being argued without the Report being availed, is without merit. There are myriad of ways in which the Report may find its way into the review proceedings. It is not the duty of this Court to dispense with

legal advice. The narrative constitutes a complete misunderstanding of the order. The order itself does not state that the applicant is prevented to introduce the Report in the review proceedings. In the impugned judgment, the Court clearly stated the following, which informs the order it reached:

“[21] ... By way of an example, in an action situation, which situation may apply to application proceedings, if rule 35(13) is complied with, a party may rely on rule 35(3) to inspect and make copies of a document...”

[17] Considering the above reasoning, it is incongruent with proper reasoning to remotely suggest that the interlocutory order prevents the arguing of a review without a report. All rule 30A ruling provides is that rule 53(1)(b) was not contravened by the respondents. Rule 30A(2) is salutary. It provides:

“(2) where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to *court and the court may make such order thereon as it deems fit.*”

[18] The phrase ‘such order thereon’ simply implies that, if the allegation, as in here, is that of non-compliance with a rule, a court must rule on non-compliance or compliance. Perhaps, the applicant used a wrong rule. Nevertheless, in *Helen Suzman* reference was made to an interlocutory application being launched, in terms of rule 6(11) as well as rule 30A. The first judgment only referenced an interlocutory application and not rule 30A. It was only the second judgment that referenced rule 30A. Most importantly, the second judgment stated the following with regard to rule 30A:

“The rule provides a general remedy for non-compliance with the Uniform Rules. But more importantly, the rule confers a wide discretion on the court to which a rule 30A application is made. If that court finds that *non-compliance has been established it is free to make any order it deems fit. Notably, the rule does not oblige the court to order compliance.*

[19] On the other hand rule 6(11) provides as follows:

“(11) Notwithstanding the foregoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice



supported by such affidavits as the case may require and set down at time assigned by the registrar or as directed by a judge.”

[20] To my mind an application contemplated in rule 6(11) is capable of producing a final and definitive judgment, which may be impugned on appeal. On the facts of this case an application contemplated in this rule was launched on 10 December 2024 and it still pending a decision. It is worth mentioning that such a pending application sought an order to compel the delivery of the Report. Applying the convenience rule, it will certainly not be in the interest of justice to allow a piecemeal determination of the review case.

[21] As I conclude, the Supreme Court of Appeal in *TWK v Hoogeveld Boerdery Beleggings (TWK)*<sup>6</sup> sufficiently warned that granting leave based on the interest of justice is only within the remit of the Constitutional Court<sup>7</sup> and no other courts.

[22] In *HJ v PJ (HJ)*<sup>8</sup> the Court reached the following apt conclusion:

“[16] The upshot of the above is that the regional court’s order to compel the respondent to discover is purely interlocutory in nature. It has no final effect, is not a definitive proceeding, and does not have the effect of disposing of at least a substantial portion of the relief claimed in the pending divorce action between the parties. Neither does it affect the rights of the parties whatsoever. The parties are still entitled to prosecute their case and are still at liberty to direct the court to any evidence and to advance any argument that they wish. The high court was obliged to entertain the issue, even if it was not raised, as to whether the matter before it was an appeal against a ‘decision’ and thus an appeal within its jurisdiction *mero motu*. Its failure to do so amounts to a misdirection which is fatal to the appeal before this Court. This is so because the high court should not have proceeded with the merits as the regional court’s order was not appealable. It should have struck the matter off the roll.”

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<sup>6</sup> 2023 (5) SA 163 (SCA)

<sup>7</sup> See *City of Tshwane Metropolitan Municipality and another* 2016 (6) SA 279 (CC).

<sup>88</sup> [2024] ZASCA 55 (19 April 2024).

[23] In *Minmetals Logistics Zheijang Co Ltd v The Owners and Underwriters of the MV Smart and another (Minmetals)*<sup>9</sup>, Koen AJA, as he then was, loudly expressed himself as follows:

“If one of the attributes in *Zweni* is lacking, an order will probably not be appealable, unless there are circumstances which in the interests of justice, render it appealable. The emphasis has moved away from an enquiry focused on the nature of the order, to one more as to the nature and effect of the order, having regard to what is in the interests of justice. It is not in the interest of justice to have a piecemeal adjudication of litigation, with unnecessary delays resulting from appeals on issues which would not finally dispose of litigation. As the Constitutional Court has held, albeit in a different context, it is undesirable to fragment a case by bringing appeals on individual aspects of the case prior to proper resolution of the matter in the court of first instance, and an appellate court will only interfere in pending proceedings in the lower court in cases of great rarity – where grave injustice threatens, and, intervention is necessary to attain justice.”<sup>10</sup>

[24] This Court plentifully agrees with the sentiments expressed by the learned Acting Judge Magardie, when the AJ concluded thus:

“As I have pointed out earlier, a piecemeal appeal against the order will not bring finality to this litigation. The entire dispute between the parties remains pending and has not been resolved. I am unable to conclude that an appeal on an isolated issue relating to pre-trial discovery, would nonetheless lead to a just and prompt resolution of the real issues between the parties, as required by section 17(1)(c) of the Superior Courts Act.”

[25] In similar vein, this Court concludes that the isolated issue of discretionary refusal to find that there is non-compliance with rule 53(1)(b) is not appealable and it is not just and prompt for such piecemeal appeal to be allowed. Properly considered, the impugned order is in a form and actually has the effect of a declaratory order. All it does is to effectively clarify the application of rule 53(1)(b) for the parties and declared that there was no non-compliance with it. It

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<sup>9</sup> [2025] 1 All SA 60 (SCA).

<sup>10</sup> *Minmetals* para 32.

does not mean that the applicant is prevented from using the Report, should it access it through other available means. The impugned order does not have such effect, as the applicant, wishes it to have. The pending review application will proceed without this punted for appeal being heard. Moreover, the executive summary of the Report as well as the media statement are at hand. In *Baloyi v MEC for Health and Social Development Limpopo and others (Baloyi)*<sup>11</sup>, the Court remarked thus:

“[36] There may be cases where it will be contentious to determine a review proceedings in the absence of a record or what remedy should follow when a proper record is available. In this case, it was improper for the Labour Court to dismiss the review without a proper record of the arbitration proceedings in the face of evidence that no record existed.”

[26] Because of all the above reasons, the application for leave to appeal falls to be dismissed. This Court has already debunked the myth that a review is incapable of being prosecuted without the Report. In the event, this Court is wrong in its conclusion that the rule 30A order is not appealable, for reasons that will follow, the application is dismissible on its merits since it fails to satisfy the section 17(1) of the Superior Courts Act test.

### *Grounds of appeal*

[27] As it is usually done, a barrage of grounds are raised herein in order to impugn the judgment of this Court. It suffices to mention that an appeal lies against the order of a Court and not the reasons<sup>12</sup>. Herein below, I shall deal with each of those grounds. It suffices to mention that in a number of instances one ground is predicated on a number of similar basis. Accordingly, this judgment shall not repeat itself unnecessarily. To do so will serve no purpose but to elongate this judgment.

### *Report not a process but decision – rule 53(1)(b) not applicable*

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<sup>11</sup> 2016 (4) BCLR 443 (CC).

<sup>12</sup> *Neotel (Pty) Ltd v Telkom SA (SOC) Ltd and others* (605/2016) [2017] ZASCA 47 (31 March 2017).

[28] As the text of rule 53(1)(b) perspicuously provides, a decision maker may be called upon to despatch a record of proceedings sought to be corrected or set aside. The rule does not define the phrase *record of such proceedings*. This Court guided by amongst others decisions of the Constitutional Court reached a conclusion that the Report is a decision as opposed to the record of proceedings. Regarding that conclusion, the relevant question for the purposes of the present application is whether I am of the opinion that another Court will and not may come to a different decision<sup>13</sup>. I must be satisfied that there is a sound and rational basis for the conclusion that there are prospects of success on appeal.

[29] This Court did not and could not reasonably conclude that the Report is not a decision capable of being reviewed. On the contrary, this Court opined thus:

“[19] ... This is not suggesting that the review of the Report is meritless. It simply points to the fact that there is no *reviewable decision* in law.

[35] Like findings and recommendations of a Commission of Inquiry, the investigative findings have no direct external and adverse legal effects. Thus not reviewable in law. Equally, an investigative report itself is not an exercise of public or statutory...”

[30] It is one thing to state that a decision cannot be reviewed and it is yet another thing to state that a decision is not reviewable in law. The question of the reviewability or not of the Report shall be the function of the review Court. The reviewability of the Report pends the decision of the review court. This Court only expressed, as it could, perplex as to how the applicant can impugn a report it never set its eyes on. This is not a review in the dark but a fear of the unknown. Nowhere in the order does this Court order that the Report is not reviewable in a sense of dismissing the review. In any review, a reviewing court concerns itself with the route travelled (process) towards a decision (outcome). As an example, the Report may be set aside on the strength of failure of *audi*

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<sup>13</sup> S v Smith 2012 (1) SACR 567, 570 para 7

*alteram partem* rule (process). This Court was not seized with a review but a rule 30A application – allegations of non-compliance with rule 53(1)(b).

[31] Accordingly, this ground and many of its tentacles, as outlined in the application for leave to appeal and heads of arguments, are predicated on an erroneous basis. The ground and its tentacles are phantasmagorical, in my respectful view. Therefore, in my opinion no other Court may arrive at a different conclusion. The appeal will not have prospects of success.

#### *Precedence of PAIA*

[32] It is common cause that before instituting review proceedings, the applicant initiated a PAIA request. At that time, section 7(1) of the PAIA was not operating against the applicant. Section 7(1) kicked in after the applicant in its ebullience initiated a review application. This Court simply remarked as follows:

“[27] ... In launching Court proceedings midstride the PAIA process, the SGB was inviting the section 7 of the PAIA exclusions upon itself. This was a self-inflicted exclusion. To use a sports metaphor, it handed itself a red card.”

[33] What this Court observed was that after realising obstacles in a PAIA process, the applicant resorted to Court proceedings. The opposite of the point made in *Standard Bank* is that Court proceedings and its rules should not be used to circumvent the PAIA obstacles. I fail to observe any legal basis for a Court of appeal to quibble with such a juxtaposition. This echoes the point of abuse of processes. In this regard, since the ground is formulated on the erroneous reading of the reasons of this Court, I am unable to conclude that another Court would come to a different conclusion.

#### *Deciding matters not raised on papers*

[34] Generally, a decision of a Court manifests itself in an order arrived at by a Court. The bulk of the judgment only constitutes reasons of the order. The order (decision) reached by this Court was:

“[40] For all the above reasons, I make the following order:

1. The interlocutory application in terms of Rule 30A is dismissed.

2. Costs are costs in the cause.”

[35] As indicated earlier, this is the only part that may attract an appeal if definitive of the rights of the parties at review. A submission subliminally made and is actually a minuscule, according to the applicant, has no presence in the statement of grounds contemplated in rule 49(1)(a). It is made in the following fashion:

“8.7 Finally, and although we do not make too much of this because it really is ancillary, there is the fact that the essence of the reasoning in the judgment did not emanate from the opposing GDE Respondents but rather from his Lordship, and was never put to counsel for the Applicant in argument.”

[36] It is understood why this submission is labelled an ancillary. It is, with such melancholy, considering that the applicant was represented by two silks and a junior, woefully lacking in specificity. When it was made during oral submissions, this Court mentioned to Mr Mullins that the Court was at a disadvantage due to lack of specificity. He submitted that the details lies in the transcript of the hearing. Rule 49(1) is clear, when applying for leave to appeal a statement of grounds is required. In my considered view, it is inappropriate for counsel to rely on a transcript of the oral submissions made during argument to establish a ground for an application for leave to appeal. After hearing oral submissions in the present application, a transcript of 132 pages was availed to this Court in chambers. It is unclear as to why this sheer unprocedural step was adopted. The question is, is it expected of a judge to trawl through the 132 pages, in order to find this reasoning that was allegedly never put to Ms Fourie? This is, with respect, preposterous in the extreme. Such a stance is not awaited from a silk.

[37] Owing to the fact that the applicant refers to this submission as ancillary, this Court is not going to dignify this ancillary submission with any consideration. As a demonstration that the submission was facetiously made, Mr Mullins submitted that the disadvantage this Court faced, to deal with the submission made, equates the situation allegedly faced by the applicant in launching and

prosecuting a review without a copy of the Report. Facetious as it was, that submission deserves no further consideration.

### *Conclusions*

[38] In sum, the order under attack is not an appealable decision. Having considered all the grounds submitted on behalf of the applicant, I am not of an opinion that the appeal will have reasonable prospects of success. It was suggested that this matter raises some compelling reasons why the appeal should be heard. Far from it. This matter does not raise compelling reasons. It lacks prospects of success and must fail. Rule 49(1)(a) of the Uniform Rules requires the present application to be supported by statement of grounds. Those grounds must demonstrate an error of facts and law. The present application constitutes nothing but a re-argument of the dismissed application.

[39] Because of all the above reasons, I make the following order:

### *Order*

1. **The application for leave to appeal is dismissed.**
2. **The applicant is to pay the costs of this application on a scale of party and party to be settled or taxed at scale C for the fees of a senior counsel and scale B for the fees of a junior counsel.**

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**GN MOSHOANA**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

APPEARANCES:

|                      |                                                           |
|----------------------|-----------------------------------------------------------|
| For the Applicant:   | Mr JF Mullins SC, Ms HR Fourie SC, and Mr CK Van Niekerk. |
| Instructed by:       | Savage Jooste & Adams, Pretoria.                          |
| For the Respondents: | Mr FJ Nalane SC and Ms A Mofokeng                         |
| Instructed by:       | State Attorney, Pretoria                                  |
| Date of Hearing      | 12 December 2025                                          |
| Date of judgment:    | 17 December 2025                                          |