



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

Case no: 25795/2024

In the matter between:

LINDSAY GRAY

APPELLANT

and

ALAIN NICON FERRIER

FIRST RESPONDENT

BEANSTALK PRODUCTIONS CC

SECOND RESPONDENT

Heard: 28 November 2025

Delivered: 6 December 2025

Summary: Leave to appeal. Section 36(2) of the Close Corporations Act 69 of 1984. Appellant mischaracterises judgment and disputes Court's discretion based on valuations jointly commissioned and agreed upon by the parties. No reasonable prospects of success, hence no realistic chance that another court may come to a different conclusion. Leave to appeal dismissed with costs.

JUDGMENT

Leave to appeal

Bhoopchand AJ:

[1] The Appellant seeks leave to appeal against this Court's judgment concerning the valuation of her 51% member's interest in the Second Respondent. The Appellant has advanced sixteen grounds of appeal. They share a common theme, i.e., a mischaracterisation of the narrative passages and the evaluative reasoning as definitive findings. The Appellant disputes discretionary conclusions reached under s 36(2) of the Close Corporations Act 69 of 1984.

[2] The Appellant contends that the Court erred in linking her email proposal to the acquisition of her interest, in finding that the acquisition amounted to BEE fronting, and in concluding that her exit was opportunistic. These contentions are misplaced. The Court expressly refrained from making a finding of fronting, noting only that the "odour of fronting" permeated the papers but that such matters fall within the jurisdiction of the BEE Commission or criminal prosecution under s 130 of the BEE Act. The Court's observations on opportunism were evaluative, based on the Appellant's demand for 51% of market value after eighteen months of membership, and do not amount to a misdirection.

[3] The Appellant further argues that the Court erred in treating the terms of acquisition as a factor in valuation. This misconstrues the judgment. The Court did not elevate acquisition terms into a binding principle; it recognised them as one of several discretionary factors alongside duration of membership, contribution to growth, misconduct, and statutory objectives that may influence equitable valuation under s 36(2). This approach accords with the principle that valuation must reflect fairness, not arithmetic alone. The Appellant asserts that the Court erred in finding misconduct, breach of fiduciary duties, or fronting.

Again, the Court made no such findings. These were listed as illustrative factors that could, in principle, affect valuation. In this matter, the Court expressly refrained from applying them to the Appellant.

[4] The Appellant challenges the Court's reference to Ferrier's offers of R2 million and R1 million, contending that the Court found these to be just and equitable consideration. The judgment merely recorded the factual history of offers exchanged; it did not adopt them as determinative of value. Similarly, the Court's recording of Ferrier's contentions regarding Jägermeister and alleged agreements was descriptive, not conclusive. The Court's valuation rested on objective financial data and discretionary equity, and not on Ferrier's assertions.

[5] The Appellant disputes the reliability of the October 2022 valuation. Yet the valuations were jointly commissioned and agreed upon by the parties. In the absence of contrary expert evidence, the Court was entitled to accept them as part of the evidentiary record. The Court's reasoning explained the methodology adopted by the accountants and drew inferences from the trends observed.

[6] The Appellant's principal complaint is that the Court erred in rejecting market value as the appropriate measure. Section 36(2) confers a wide discretion to determine "such amount as it deems fit." The Court was entitled to reject market value as disproportionate in the circumstances, and to adopt a method that balanced financial data with equitable considerations. The Court did not rely on irrelevant factors; it expressly refrained from making findings of fronting or misconduct, and considered profits, retained income, and Ferrier's statements, but balanced them against duration of membership, contribution, and fairness. This was a legitimate exercise of discretion, not a misdirection.

[7] Paragraph [20] of the judgment underscores the Court's procedural fairness. Both parties were present, encouraged to settle, and invited to make submissions after receiving the expert report. The Court cautioned that valuation outcomes may be unsatisfactory to one or both parties and emphasised its discretion under s 36(2). This transparent process defeats any suggestion of irregularity.

[8] The test for leave to appeal requires reasonable prospects of success, meaning a realistic chance that another court may come to a different conclusion. The Appellant's grounds disclose no such prospects. They rest on mischaracterisations of the judgment and disagreements with discretionary findings. No compelling reason exists to warrant appellate interference.

ORDER

The application for leave to appeal is dismissed with costs.

AJAY BHOOPCHAND

Acting judge

High Court

Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 6 December
2025

Appellant's Counsel: D Van Reenen
Instructed by Gillan & Veldhuizen Inc
Respondent's Counsel: J K Felix
Instructed by Frank Holland & Associates

