

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

CASE NUMBER: 2019/29564

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

DATE: 17 Dec 2025

In the matter between:

B[...], I[...] K[...]

Applicant

and

B[...], C[...] A[...] (*nee W[...]-H[...]*)

Respondent

JUDGMENT – LEAVE TO APPEAL

MILLARD AJ

- 1 This is an application for leave to appeal against the judgment and order of this Court dated 20 October 2025, dismissing the application for an order interdicting and restraining the respondent from depleting R20 million withdrawn from her Liberty Life investment account (**1596174000**), pending the finalisation of the divorce action.

The legal test

- 2 The relevant test for leave to appeal required by section 17(1)(a)(i) of the

Superior Courts Act, No. 10 of 2013, is whether I am of the opinion that the appeal would have a reasonable prospect of success. This test is more stringent than the former test for leave to appeal which required only a view that there was a reasonable prospect that the court might come to a different conclusion.

- 3 The applicant for leave to appeal contends that there are four grounds of appeal in respect of which the Court erred and on the basis of which leave to appeal ought to be granted.

Appealability

- 4 Over and above the common law test, it is well established that an interim order may only be appealed against if the interests of justice so dictate.¹ To qualify as exceptional, the circumstances must be out of the ordinary and of an unusual nature, something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different.²
- 5 The applicant's heads of argument deal with the appealability of the order only in passing. In its concluding paragraph the applicant states that there are two compelling reasons for why leave should be granted: the first is that there are conflicting judgments on the matter under consideration and that the Full Court has already found in favour of the applicant and referred the matter back to trial on the separated issue; the second is that accrual of the estate has yet to be

¹ KSL and AL at [45]

² MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas 2002 (6) SA 150 (C) at 156 H-I

determined by the Court and the ramification of the judgment (refusing the interdict) is akin to a final finding on the accrual.

- 6 As to the first reason, the applicant does not cite the cases that it claims made conflicting judgements on the matter under consideration. Moreover, the Full Bench decision that is relied on did not decide the merits of the case.
- 7 As to the second reason, the Court did not make a finding on the accrual. As the respondent correctly points out, the interdict was refused because the applicant did not plead a *prima facie* contingent accrual claim. The refusal of the interdict was grounded on the absence of a vested or contingent accrual claim. The applicant remains at liberty to pursue an accrual claim in the divorce proceedings should the jurisdictional facts for such a claim on the dissolution of the marriage. Should evidence emerge of actual dissipation coupled with a *prima facie* contingent accrual claim, nothing precludes the applicant from approaching the court anew for appropriate interim relief.

No reasonable prospects that another court would come to a different conclusion

- 8 Even if the order were appealable, in my view, there are no reasonable prospects that another court would come to a different conclusion for the reasons set out below.
- 9 The applicant's first ground of appeal is that the Court found that no undertaking was sought in respect of the Liberty investment plan which was

held in the respondent's name. The applicant contends that the Court failed to have regard to what is contained in the Replying Affidavit, i.e., that when the urgent application was launched and settled the investment had not matured.

- 10 This ground of appeal is without merit. No such finding was made. Reference to the fact that no undertaking was sought in respect of the Liberty investment was made in the context of describing the litigation history. This fact had no bearing on the reason why the interdict was refused.
- 11 The applicant's second ground of appeal is that the Court found that there was a donation when the respondent had not pleaded a donation in the divorce. This ground of appeal is without merit. The Court made no such finding; the Court merely summarised the parties' contentions in respect of the Liberty investment.
- 12 The applicant's third ground of appeal is that it is not clear whether the Court's finding that the applicant's papers, in their current form do not include an accrual claim refers to the papers in the interdict application or the pleadings in the divorce action.
- 13 This ground of appeal is without merit. It is common cause that the pleadings in the divorce action do not include a claim for accrual in the applicant's favour. On the applicant's version in the interdict papers, determination of the accrual is a matter of debate that stands to be determined by the trial court. The applicant's reliance on the Section 7 Notices does not alter this position.

- 14 The applicant's fourth ground of appeal is that the Court's finding that there was no risk of the respondent diminishing the funds, was unsubstantiated since the respondent's version is unsubstantiated and denied by the applicant.
- 15 This ground of appeal does not accurately reflect the Court's finding – i.e., that the applicant's claim that the respondent intends diminishing the funds is unsubstantiated. The applicant has pointed to no facts which another Court could reasonably rely on to find the opposite.
- 16 The applicant's fifth ground of appeal is that the Court's finding that the respondent has sufficient assets to satisfy any contingent accrual claim that the applicant may have, is unsubstantiated. Again, the applicant does not accurately reflect the Court's finding – i.e., that the applicant's claim that the respondent does not have sufficient assets to satisfy any future accrual claim in his favour is unsubstantiated.

The order

- 17 In the circumstances, I make an order in the following terms.

- 17.1 The application is dismissed with costs, such costs to be determined on scale C.

K M MILLARD
ACTING JUDGE OF THE HIGH COURT

For the Applicant:

K Tsatsawane SC

S Martin
Instructed by Tony Berlowitz
Attorneys

For the Third Respondent:

SP Pincus SC
Instructed by Howard Woolf

Date of Hearing:

28 November 2025

Date of Judgment:

17 December 2025