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

CASE NO: 2014-094498

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

20 January 2026

DATE

SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

(Registration number: 1962/000738/06)

Applicant

and

GOEIEHOEK BOERDERY CLOSE CORPORATION

(Registration number: 1996/049589/23)

1st Respondent

KEET BAREND FREDERIK

(Identity Number: 6[...])

2nd Respondent

KEET BAREND FREDERIK N.O

(Identity Number: 6[...])

(in his capacity as trustee for the time being of the XL Trust)

3rd Respondent

KEET BAREND JOHANNES N.O

(Identity Number: 9[...])

(in his capacity as trustee for the time being of the XL Trust)

4th Respondent

JUDGMENT

(This leave to appeal was heard online on 14 November 2025, and judgment was reserved. Judgment will be handed down by uploading the judgment onto the electronic file of the matter on CaseLines. The date of uploading onto CaseLines is deemed to be the date of the judgment.)

LUKHAIMANE AJ

1. This is an application for leave to appeal against the judgment and order of this Court handed down on 20 August 2025, with reasons provided on 9 September 2025 (“the order”). The order dismissed with costs an application by the Applicant to declare a property executable. The Respondents oppose the granting of leave to appeal.
2. I had the opportunity to hear arguments on behalf of the parties and perused the application for leave to appeal as well as the heads of argument. There are two issues for determination. Firstly, whether the order is appealable, and secondly, whether an appeal would have reasonable prospects of success, even were the order to be appealable.

Appealability

3. This Court may only grant leave to appeal if the order sought to be appealed is a “decision” within the meaning of section 16(1)(a) of the Superior Courts Act 10 of 2013 (“Superior Courts Act”). The meaning of the term “decision” in section 16(1)(a) of the Superior Courts Act and the phrase “judgment or order” in section

20 of repealed former Supreme Courts Act 19 of 1959, is similar. In *Neotel (Pty) Ltd v Telkom SA Soc Ltd and Others*¹, Crippin AJA (as he then was) stated:

“13. If a decision did not constitute a ‘judgment or order’ the decision was not appealable under the Supreme Courts Act. Since there is no conceptual difference between such a judgment or order and the ‘decision’ contemplated in s 16(1)(a) of the Superior Courts Act, the same would hold true under the Superior Courts Act. The ‘judgment or order’ was held to refer to a substantive judgment or order in terms of which the court granted or refused the relief sought. The same meaning must be given to the ‘decision’ contemplated in s 16(1)(a) of the Superior Courts Act.”

4. This Court’s order dismissing the Applicant’s application was due to non-compliance with the procedural requirements for service. The court in *Zweni v Minister of Law and Order*² formulated the requirements for appealability of an order. Following a comprehensive review of the authorities, Harms AJA (as he then was) said the following:

“24. In the light of these tests and in view of the fact that a ruling is the antithesis of a judgment or order, it appears to me that, generally speaking, a non-appealable decision (ruling) is a decision which is not final (because the Court of first instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.”

5. The court in *Eskom Holdings SOC Ltd v Sonae Arauco (Pty) Ltd*³ states as follows:

“33. This Court in Zweni v Minister of Law and order (Zweni), formulated the following requirements for appealability of an order: (a) the decision must be final in effect and not open to alteration by the court of first instance; (b) it must be

¹ (605/2016) [2017] ZASCA 47 (31 March 2017)

² [1993] 1 All SA 395 (A)

³ (1018/2023) [2024] ZASCA 177

definitive of the rights of the parties; and (c) it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

34 However, even if an order does not meet the Zweni threshold, it may nevertheless be appealable if the interests of justice require it. In United Democratic Movement v Lebashe Investment Group (Pty) Ltd, the Constitutional Court made it clear that the 'interests of justice approach' is not limited to the Constitutional Court but applies equally to this Court.

35 In Government of the Republic of South Africa and Others v Von Abo, this Court commented that: '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 statement of justice.

36 In International Trade Administration Commission v SCAW South Africa Ltd at paragraph 56 the Constitutional Court, in holding that the requirements for appealability must be considered disjunctively rather than conjunctively, explained that: It is sufficient if the order disposes of 'at least a substantial portion of the relief claimed in the main proceedings'. Also, it is adequate if the interim order is intended to and does have an immediate effect and is not susceptible to be considered on the same facts in the main proceedings."

6. The advent of the Constitution affected on the common law requirements for appealability of orders established in *Zweni*. The constitutionally required standard is instead whether an appeal against an interlocutory or interim order would be "in the interests of justice". The common law test for appealability articulated in *Zweni* is thus no longer decisive, irrespective of any other considerations.
7. The application of the interests of justice standard is a fact specific enquiry involving a careful balancing and weighing up of all relevant factors.

8. In *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd*⁴, the Supreme Court of Appeal confirmed that the *Zweni* triad remains relevant and has not been supplanted by the development of the jurisprudence. The interests of justice standard, the Court held, must also be considered in the context of two other principles, legal certainty and finality in litigation, which are themselves key components of the rule of law. Unterhalter AJA observed that “...courts should be cautious to adopt standards for their decisions so porous that a litigant cannot be advised, with any reasonable probability, as to the decision that a court is likely to make.” The learned Judge went on to say:

“30. I do not here essay a general account of appealability. I do affirm, though, that the doctrine of finality must figure as the central principle of consideration when deciding whether a matter is appealable to this Court. Different types of matters arising from the high court may (I put it no higher normatively) warrant some measure of appreciation that goes beyond Zweni or may require an exception to its precepts. Any deviation should be clearly defined and justified to provide ascertainable standards consistent with the rule of law.

Recent decisions of this Court that may have been tempted into the general orbit of the interests of justice should now be approached with the gravitational pull of Zweni.”

9. The continued relevance of the *Zweni* attributes of an appealable order and the application of the interests of justice standard cautioned in *TWK Agriculture* and several judgments of the Supreme Court of Appeal handed down subsequent thereto cannot be understated.
10. The Supreme Court of Appeal in *Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV Smart and Another*⁵, emphasized the avoidance of

⁴ (273/2022) [2023] ZASCA 63; 2023 (5) SA 163 (SCA) (5 May 2023)

⁵ (573/2023) [2024] ZASCA 129; [2025] 1 All SA 60 SCA; 2025 (1) SA 392 (SCA) (1 October 2024)

piecemeal litigation and continued relevance of the *Zweni* triad. Koen AJA stated that:

“32. 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 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.

33. 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 the 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 the proper resolution of the matter in the court of first instance, and an appellate court will only interfere in pending proceedings in the lower courts in cases of great rarity – where grave injustice threatens, and, intervention is necessary to attain justice.”

11. The present approach to appealability as in *Government of the Republic of South Africa v Van Abo*, applied by the Supreme Court of Appeal in *Eskom Holdings Soc Ltd and Another v Sonae Arauco (Pty) Ltd supra* may be summarized as follows:

“35. 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.”

12. As to whether the relief granted was final in nature, it was held by the Constitutional Court in *United Democratic Movement and Another v Lebashe Investment Group*

(Pty) Ltd and Others⁶, that the form of the order and its effect must be considered when deciding whether such is appealable. An order which in form appears to be purely interlocutory, may nonetheless be appealable if its effect is such that it is final and definitive of any issue or portion thereof in the main action.

13. The order in the present instance dismissing the application as it was fatally defective. During the hearing, the applicant persisted with the arguments for an order in terms of Rule 46A, to the very end, whilst it was clear that the non-compliance rendered the application fatally defective.
14. The order is not definitive of the issues arising in the action nor does it limit the discretion vested in the court to consider any argument or evidence which the Applicant may wish to advance regarding the relief they seek against the first and second respondents.
15. A crucial requirement for the operation of the principle of *res judicata* is that it must be the same issue of fact or law determined by the judgment of the previous court or earlier, that arises before a later court for determination. If the same issue was not determined by the earlier court, an essential requirement for the operation of *res judicata* has not been met. The question is always what issue of fact or law was decided by the court in the earlier proceedings and was it finally decided. The decision of the earlier court can only support a finding of *res judicata* if it was a final and definitive judgment on issues arising before the later court. The application was not dismissed on the merits of the claim for payment for the Applicant. The Applicant remains entitled to pursue payment against the Respondents. The applicant may even restart the Rule 46A application, following the correct procedure as stated in the judgment.
16. The application may not be viewed piecemeal as proposed by the Applicant in its proposition that the service requirements for the money judgment against the first

⁶ (CCT 39/21) [2022] ZACC 34; 2022(12) BCLR 1521 (CC); 2023 (1) SA 353 CC 22 September 2022

and second respondents must be separated from the rule 46A application. The application is one and therefore procedural requirements in respect of all the claims must be complied with.

17. No argument was made relevant to the interests of justice, therefore this issue will not be traversed.
18. There is in my view no doubt that allowing an appeal at this stage will delay the proceedings.
19. The order sought to be appealed furthermore lacks the required attributes of an appealable decision as contemplated by section 16(1)(a) of the Superior Courts Act, as it is not a final decision or judgment as envisaged and did not relate to the merits of the matter. On this basis as well, I would dismiss the application for leave to appeal.

Prospects of success

20. I shall deal briefly with the prospects of success on appeal, if I am incorrect regarding the appealability of the order. A number of these grounds relate to the Court's reasons for its order as opposed to the order itself. The purpose of an application for leave to appeal is furthermore not an opportunity for parties to rehash and traverse again, the merits of the matter.

Relevance

21. I concluded in my judgment that the Applicant had failed to comply with the service requirements for Rule 46A application.
22. The main submission advanced by the Applicant in respect of the Court's findings, is that in so finding, the Court erred.

23. The judgment dealt with these submissions. They are without merit. I repeat that a determination by this Court on compliance with a Rule 46A application, can on no sustainable basis be construed as a final determination on the other legal and factual issues pending before the court.

Conclusion

24. Section 17(1)(a)(i) of the Superior Courts Act provides that leave to appeal may only be granted if an appeal would have a reasonable prospect of success.
25. The Applicant has not suggested that there are compelling reasons why an appeal should be heard as contemplated by section 17(1)(a)(ii) of the Act. I find none. The application for leave to appeal does not raise any significant questions of law or issues of public importance that may have a bearing on future disputes.
26. I have carefully considered the Applicant's grounds of appeal. I am not persuaded that another Court would reasonably arrive at a different conclusion, even were the order to be appealable.

Order

27. The application for leave to appeal is dismissed with costs.

M A LUKHAIMANE

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For Applicant: E Furstenburg

Instructed by: Claassen Inc

For Respondents: A S Marais

Instructed by: HW Smith & Marais Attorneys

Date of hearing: 14 November 2025

Date of judgment: 20 January 2026