

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

Case No : 2022-047270

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE 21/1/2026

SIGNATURE

In the matter between:

Y[...] V[...] (born D[...] L [...])

First Applicant

L[...] L[...] D[...] L[...] (Snr)

Second Applicant

L[...] L[...] D[...] L[...] (Jnr)

Third Applicant

and

C[...] J[...] B[...] V [...]

Respondent

JUDGMENT : APPLICATION FOR LEAVE TO APPEAL

BOTES AJ

INTRODUCTION

1. The First, Second and Third Applicants¹ initiated an urgent application on **16 November 2022** in which they apply for interdictory relief as well as for an Order in terms of which the Respondent is declared to be in contempt of a Court Order that was issued by this Court on **29 September 2022** in accordance with the provisions of Rule 43 of the Uniform Rules of this Court.

¹ Hereinafter collectively referred to as “**the Applicants**”.

2. The papers are voluminous².
3. Counsel for the Applicants³ and counsel for the Respondent⁴ prepared extensive Heads of Argument which were extremely helpful and of invaluable assistance. I am grateful for counsels' assistance in this regard.
4. The application was set down for hearing in the Urgent Court on **19 January 2023**. I delivered an *ex tempore* Judgment⁵ on the same day, in terms of which I made an Order in the following terms :
 1. **The relief contained in paragraph 2 of the Notice of Motion, dated 15 November 2022, is granted; and**
 2. **The Respondent is ordered to pay the costs of this application on the scale as between party and party.**

THE APPLICATION FOR LEAVE TO APPEAL INITIATED BY THE RESPONDENT

5. The Respondent, aggrieved by the Judgment and the Order that was made on 19 January 2023, initiated an Application for Leave to Appeal on **8 February 2023**.
6. The Respondent relies in this regard, *inter alia*, on the following grounds in support of his Application for Leave to Appeal :
 - 6.1 The Court erred in finding that the Applicants satisfied all the requirements for final interdictory relief, under circumstances where the Respondent allegedly made the defamatory statements "in the early 1990's", which incident the Respondent said he had no knowledge of nor that he refers to such alleged incident in his statements;
 - 6.2 The Court erred in finding that the Respondent did not have a *bona fide* defence to the case he was called upon to meet, i.e. the alleged statements that were made of an incident in the early 1990's;
 - 6.3 The Court erred in **not** finding that the Respondent did not make the impugned statements;

² The Founding Affidavit, together with the annexures attached thereto, consist of 110 pages. The Answering Affidavit, together with the annexures attached thereto, consist of 65 pages, whilst the Replying Affidavit, together with the annexures attached thereto, consist of 40 pages.

³ Adv GF Heyns SC.

⁴ Adv WF Wannenburg.

⁵ Consisting of 78 pages.

- 6.4 The Court erred in **not** finding that a *bona fide* factual dispute exists in respect of the alleged defamatory statements upon which the Applicants relied, which dispute was not capable of being resolved on the papers in motion proceedings;
 - 6.5 The Court erred in finding that the application was urgent;
 - 6.6 The Court erred in **not** striking the application from the roll with costs for a lack of urgency;
 - 6.7 The Court erred in granting final interdictory relief, because the Respondent allegedly told the children of the alleged defamatory statements on **23 October 2022**, when there is no proper case made out that the so-called injury committed or reasonably apprehended is of an ongoing nature;
 - 6.8 The Court erred in finding that the Applicants made out a case for final interdictory relief on a balance of probabilities when the relief was essentially granted for an alleged past invasion of their rights;
 - 6.9 The Court erred in **not** finding that the Respondent's defence was "proper" in law, as the Respondent relied upon the truth of the impugned allegations;
 - 6.10 The Court erred in rejecting the Respondent's defence and accepting the Applicants' version;
 - 6.11 The Court erred in accepting the dates the parties referred to in their Affidavits, albeit they were different dates and incidents which were irrelevant in the context of granting final interdictory relief;
 - 6.12 The Court erred in relying on what the children had said to the First Applicant on 23 October 2022, which conversation in context of this matter and in consideration of whether the injury committed or reasonably apprehended will be ongoing, was irrelevant and was based on inadmissible hearsay evidence; and
 - 6.13 The Court erred in ordering the Respondent to pay the costs of the application when the Respondent was substantially successful in opposing the Contempt of Court relief which was dismissed.
7. The Respondent therefore submits that the Court should have dismissed the application with costs, alternatively that each party should pay their own costs, subsequent to the interdictory relief that was granted on the one hand

and the Contempt of Court relief that was dismissed on the other hand⁶.

8. The Application for Leave to Appeal was heard virtually on 18 November 2024.

THE TEST FOR LEAVE TO APPEAL : SECTION 17(1)(a)(i) OF THE SUPERIOR COURTS ACT, NO. 10 OF 2013

9. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another Court may come to a different conclusion to that reached by the Court in its Judgment. Section 17(1)(a)(i) of the Superior Courts Act, No. 10 of 2013⁷ provides 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”.
10. The Supreme Court of Appeal⁸ held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a Court of Appeal “would” reasonably arrive at a conclusion different to that of the Trial Court. These prospects of success must **not** be remote, but there must exist a reasonable chance of succeeding. An Applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success⁹.
11. The aforementioned ratio was followed by the SCA in which Plasket JA held as follows :

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal would reasonably arrive at a conclusion different to that of the Trial Court. In order to succeed, therefore, the Appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. 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

⁶ With each party being successful.

⁷ Which came into operation on 23 August 2013.

⁸ Hereinafter referred to as “**the SCA**”.

⁹ See : *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 (31 March 2021).

cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”¹⁰

12. The wording of Section 17(1)(a)(i) of the Superior Courts Act raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. The SCA remarked that an Applicant for Leave to Appeal now faces a higher and more stringent threshold, compared to that under the provisions of the repealed Supreme Court Act, No. 59 of 1959¹¹.
13. The Full Court of this Division subsequently endorsed the aforementioned principle¹².
14. Contempt of a Court Order is indeed a serious offence, notwithstanding the fact that this Court was **not** amenable to grant an Order in terms of which the Respondent is found to be in contempt of the Order made by this Court on **29 September 2022**.
15. It is trite that “urgency” is **not** appealable. This ground upon which the Respondent relies is, however, not decisive of this Application for Leave to Appeal.

CONCLUSION

16. Whilst I remain of the view that the Applicants did satisfy the requirements for final interdictory relief and whilst I remain of the view that wilfulness and *mala fides* on the part of the Respondent have not been demonstrated, I am persuaded that the issues raised by the Respondent in his Application for Leave to Appeal are issues in respect of which another Court is likely to reach conclusions different to those reached by this Court.
17. The Appeal therefore has, in my considered view, reasonable prospects of success. Counsel for the Respondent submitted that Leave to Appeal

¹⁰ See : **S v Smith 2012 (1) SACR 567 (SCA) at para 7.**

¹¹ See : **Notshokovu v S [2016] ZASCA 112 (7 September 2016).**

¹² See : **Acting National Director of Public Prosecutions and Others v Democratic Alliance, In re: Democratic Alliance v Acting National Director of Public Prosecutions and Others [2016] ZAGPPHC 489 (24 June 2016).**

should be granted to the Full Court of this Division.

18. This Court is therefore persuaded that Leave to Appeal should be granted to the Full Court of this Division.

WHEREFORE an Order in the following terms is made :

1. **Leave to Appeal is granted to the Respondent to the Full Court of this Division; and**
2. **The costs of the Application for Leave to Appeal are costs in the Appeal.**

FW BOTES

Acting Judge of the High Court of South Africa
Gauteng Division, Pretoria

Counsel for the Respondent

Adv W.F. Wannenburg

Attorney for the Respondent

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Date Reserved:

Date Delivered: