



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

Case No: 22118/24

In the matter between

MOHAMED SHABIER HARRIS

APPLICANT

AND

JACQUELINE STEPHANIE HARRIS

RESPONDENT

JUDGMENT delivered on 05 February 2026

THULARE J

ORDER

[1] In an urgent application for an anti-dissipation order on 29 October 2024, this court made an *ex-tempore* order in favour of the respondent against the applicant. The court did not provide reasons for the order when it was made in the urgent court after considering the papers and hearing the legal representatives. The applicant did not request reasons for that order. The applicant applied for leave to appeal. The argument was that the order restrained disposition of the entire proceeds of the sale of the property and did not limit itself to the amount alleged to

be due by the respondent. I was persuaded by the reasons advanced by the applicant and granted leave to appeal to the full court of this division, and written reasons were provided.

[2] It is now, when the matter is before the full court, that the applicant approached me with a request for reasons for the order made in the urgent court on 29 October 2024. The request is purportedly in terms of Rule 49(1)(b) of the Uniform Rules of Court. Rule 49(1)(b) reads:

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(1)(b) When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within fifteen (15) days after the date of the order appealed against: provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within fifteen (15) days after such later date: provided further that the court may, upon good cause shown, extend the aforementioned period of fifteen days.

When a judgment is appealed against, written reasons are indispensable and it is understood that failure to supply reasons may amount to a grave lapse of duty and an impediment to the appeal process. It is also understood that ordinarily a failure to provide reasons, especially when specifically requested when an order was made without the reasons, may amount to a violation of a constitutional duty [*Mphahlele v First National Bank of South Africa Ltd* 1999 (2) SA 667 (CC) at para 12.

[3] I have doubts that the applicant can now approach the court, not at the time that leave to appeal was considered or before, but after the leave to appeal was considered and granted and still seek to rely on Rule 49(1)(b). The first proviso to

Rule 49 makes it very clear what the order of events should be where the order was made with no reasons provided like in the case before me. Once the order is made, the rule anticipates that either the judge would deliver the reasons later as indicated in their order, or in the absence of a commitment to a date, that the reasons will be provided upon request. This explains why the date of delivery of the reasons later than the order, in those two instances, is then the date from which the countdown begins, for the applicant to file their application for leave to appeal. The second proviso, for example, would apply where the applicant files the request for reasons and the application for leave to appeal simultaneously. The court may allow the applicant time to consider the reasons provided later and then set the application for leave to appeal hearing to a further later date. Some circumstances may even require a court to extend the time period for the request for reasons, before the filing of the application for leave to appeal.

[4] Although *Snyman v Crouse* 1980 (4) SA 42 (O) at 45E dealt with the equivalent rule in the Magistrates Courts Rules of Court, which also read differently, I am in agreement with the principle set out therein that the request for a written judgment or for reasons for an order of court is a proceeding which precedes the filing of the application for leave to appeal. The path of travel to be followed appears in *JMM v STNM* (5647/2019)[2025] ZAGPPHC 487 (9 May 2025), The request for written reasons is the prerogative of the prospective appellant, who may or may not take up the procedural step. The applicant is entitled to proceed with his application for leave to appeal and argue it without the written reasons for judgment if he so elected [*Regering van die Republiek van Bophuthatswana v Van Zyl* 1981 (1) SA 484 (NC) p 487D]. The applicant was able to set out the grounds for the appeal clearly and succinctly. Whilst the matter was relatively fresh in the mind of the

court, the court was able to consider whether there were reasonable prospects of success and decided accordingly.

[5] The hearing of an application for leave to appeal leaves a judicial mind immersed in the contentions advanced to urge it to conclude that another court would arrive at a different conclusion. It revisits the factual issues relative to the claim. Often, as is the case in this matter, especially where the initial order was in the urgent court, the aggrieved respondents lawyers had time to fully consider the issues and may argue the law and advance precedent cases which were not drawn to the attention of the urgent court. The court gives thought to the propriety and implications of granting the leave to appeal [*Van Heerden v Cronwright and Others* 1985 (2) 342 (TPD) at para343H -344E]. The question whether leave should be granted is a higher and stringent threshold [*Van Wyk v S, Galela v S* 2015 (1) SACR 584 (SCA) at para 14; *Notshokuvu v S* [2016] ZASCA 112]. I am unable, at this stage after that test, to compartmentalize my mind and bring it to the position as at before that immersion in the contentions. At this stage of the proceedings, after that immersion, I have my doubts that Rule 49(1)(b) was intended to reverse the clock and take me back in time. For these reasons the request is dismissed. No cost order is made.

DM THULARE

JUDGE OF THE HIGH COURT