IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 077776/2024

DATE: 05.02.2026

1. REPORTABLE: No
2. OF INTEREST TO OTHER JUDGES: No
3. REVISED.

[redacted]

SIGNATURE DATE: 5 February 2026

In the matter between

KRUGER RANCH INVESTMENTS (PTY) LTD	Applicant
and	
ABSA BANK LIMITED	First Respondent
MASTER OF THE HIGH COURT, JOHANNESBURG	Second Respondent
JOHANNA MAHANYELE NO	Third Respondent
RENE WEBBER NO	Fourth Respondent
RANEL FINANCIAL TRUST (PTY) LTD	Fifth Respondent
SHERIFF OF THE HIGH COURT, KOSTER	Sixth Respondent

J U D G M E N T *EX TEMPORE*

WILSON, J: The applicant seeks leave to appeal against a judgment I handed down on 19 January 2026, in which I refused to grant an interim interdict restraining the implementation of an order issued in terms of the Companies Act winding the applicant up. The interim interdict was to operate pending the determination of an application to rescind the winding-up order. I refused the interim interdict because the applicant had not demonstrated a *prima facie* right to rescind the winding-up order. In the application for leave to appeal, none of the various findings of fact or of law on which I reached that conclusion were challenged. There were really only two points of any substance.

The first was that, even though I found that there was no *prima facie* right to restrain the implementation of the winding up order, I had not considered the other three legs of the interim interdict test: where the balance of convenience lies, whether harm has been actually sustained, or is reasonably apprehended, and whether the applicant has another effective remedy. The suggestion seems to have been that I was mistaken in considering only whether the applicant had demonstrated a *prima facie* right to the recission relief.

That point is transparently without merit. If an applicant for an interim interdict cannot show a *prima facie* right at all, then it does not matter where the analysis might end up on the other three legs of the test. In other words, an interim interdict cannot be granted where there is no right at all – not even a *prima facie* right – to the final relief sought. My conclusion that no right had been shown disposed of the entire application.

There was, secondly, an allegation of bias. The allegation was difficult to understand. In the first place, no application for my recusal and no allegation of bias was made at the hearing of the matter *a quo*. Insofar as I can work out, the substance of the allegation in the application for leave to appeal is that I appeared to “raise points on behalf of the respondents” during argument *a quo*. I am not sure what that means, since the points I was alleged to have raised were all matters dealt with by the respondents themselves in their papers. Those points were not “raised” on the respondents’ behalf. They were mentioned to facilitate a thorough hearing of the issues outlined on the papers. There was nothing to suggest that I had prejudged the result, or that a reasonable person observing the proceedings would have thought that I prejudged the result. Moreover, Ms Makula, who motivated the application for leave to appeal, chose not to advance the allegation of bias in the notice of application for leave to appeal. For those reasons, the allegation of bias is without merit.

There is, as far as I can see, nothing else in the application for leave to appeal, other than a reassertion of the arguments advanced on behalf of the applicant *a quo*. I have dealt with those arguments in my judgment *a quo*, to which I have nothing to add. There is, in my view, no prospect of a court of appeal reversing or materially altering the order I made. The application for leave to appeal will be dismissed.

I now turn to a rather unfortunate matter that arose when the application for leave to appeal was called today. The applicant was represented in the court *a quo* by a Ms Simelane, who is a Trust Account Advocate briefed directly by the applicant. The application for leave to appeal was signed by Ms Simelane, as was the notice setting down the application for leave to appeal.

As a Trust Account Advocate, Ms Simelane was perfectly entitled to discharge the functions of both an attorney and an advocate on the applicant's behalf. She was also entitled to sign the notice of set down and the application for leave to appeal, and to do all other things that an attorney would ordinarily do to prosecute the application.

But those entitlements bring obligations with them. Where acting for a lay client, a Trust Account Advocate's principal obligation is to deal personally with their client's case. In other words, a Trust Account Advocate may not pass the obligation to appear before a court on their client's behalf to another practitioner without the client's consent.

When the matter was called this morning, I expected to see Ms Simelane ready to argue the application. But Ms Simelane did not appear. Instead, a Ms Makula placed herself on record. Ms Makula is a referral advocate. It was not initially clear whether Ms. Makula was briefed by an attorney or by Ms Simelane herself. Certainly, no attorneys have come on record for the applicant, either in the main application, or in the application for leave to appeal.

In response to questions from me, Ms Makula first said that she had been briefed by a firm of attorneys. She then said that she had in fact been briefed by Ms Simelane. But a Trust Account Advocate is not entitled to brief another advocate to stand in for them without the express prior consent of their lay client. I have seen no evidence of such consent, and Ms Makula's apparent confusion about who had briefed her raises the question of whether Ms Simelane misconducted herself in failing to appear before me today and then purporting to brief someone else to do so.

I have already remarked in my judgment *a quo* that the facts and evidence advanced in support of the application *a quo* were exceedingly thin and that the way the case was litigated left a great deal to be desired.

Ms Simelane's failure to appear before me today *prima facie* compounds the lack of competence and professionalism with which this matter has been pursued. It also placed me, and the respondents, in the invidious position of having to work out whether the applicant was actually represented before us.

There was no evidence on record that the applicant had briefed a firm of attorneys. Nor was there any indication before the matter was called that Ms Simelane would not be appearing personally. Since no attorneys who could have briefed Ms Makula had actually been instructed by the applicant, and since Ms Simelane was not entitled to brief a referral advocate to stand in for her without the applicant's consent – which was not in evidence – purely at the technical level, the applicant may have been unrepresented today.

For all those reasons, I think it is appropriate to ask Ms Simelane explain the situation, and, in so doing, to show cause why she should not in her personal capacity pay the costs occasioned by the application for leave to appeal. I propose to do so by affording her until 20 February 2026 to place on affidavit such considerations as may be relevant to my decision as to whether to mulct her in those costs. Either of the respondents appearing before me may respond to that affidavit by no later than Friday, 6 March 2026. Thereafter, I will either give judgment or directions for a further hearing.

I make the following order.

1 The application for leave to appeal is dismissed.

2 The trust account advocate who appeared for the applicant in the court *a quo*, Ms. Simelane, is

directed to show cause on affidavit by no later than Friday 20 February 2026, why she should not pay the costs of the application for leave to appeal *de bonis propriis* on the attorney and client scale.

3 The first and third respondents may file an affidavit dealing with the contents of Ms. Simelane's affidavit by no later than 6 March 2026.

4 The costs of the application for leave to appeal are reserved pending the delivery of the affidavits set out above.

[redacted]

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WILSON, J
JUDGE OF THE HIGH COURT
5 February 2026