

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024/035893

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>06 February 2026</u>	<u>[REDACTED]</u>
DATE	SIGNATURE

MJAJU JOSEPH MATHE

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION & ARBITRATION**

First Respondent

PITSI MAITSHA

Second Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

READ AJ

Introduction

[1] This judgment concerns an application for leave to appeal brought by the applicant against the judgment and order of this Court handed down on 5 September 2025, in terms of which the applicant's application for the rescission of an order made by Acting Judge Moorcroft on 28 March 2024 was dismissed with costs. The applicant seeks leave to appeal to the Full Court of this Division.

[2] The application for leave to appeal is opposed by the respondents, who raise a number of preliminary objections and submit that the application lacks merit on all grounds advanced. The respondents have filed comprehensive heads of argument in opposition to the application.

[3] The issues for determination are threefold: first, whether the application for leave to appeal was brought within the time periods prescribed by the Rules; second, whether the appeal would have any reasonable prospects of success; and third, whether the appeal would have any practical effect or result. These issues will be addressed in turn.

Procedural history

[4] The procedural history of this matter is necessary for a proper understanding of the present application. The applicant initially brought an urgent application before this Court under case number 2024-022536, seeking damages in the amount of R182 435.00 and punitive damages in the amount of R250 000.00 against the respondents, arising from alleged omission, fraud and misrepresentation by the second respondent.

[5] That urgent application was heard before Acting Judge Moorcroft on 28 March 2024. The respondents opposed the application on the ground that the relief sought by the applicant fell within the exclusive jurisdiction of the Labour Court, given that the applicant had a pending matter in that forum. Acting Judge Moorcroft dismissed the application with costs.

[6] Rather than appealing that dismissal through the ordinary appellate processes, the applicant brought a fresh application, initially styled as a Rule 43 application but, subsequently, amended to proceed under Rule 42, seeking to rescind or vary the order of Acting Judge Moorcroft. This application was allocated case number 2024-035893, which is the matter presently before this Court.

[7] The Rule 42 application came before me for hearing on 11 June 2025. In my judgment delivered on 5 September 2025, I dismissed the application with costs, finding that the applicant had failed to establish any of the grounds contemplated in Rule 42 that would justify the rescission of the order.

[8] It is against that judgment that the applicant now seeks leave to appeal.

The preliminary objection: timing of the application

[9] The respondents raise a preliminary objection that the application for leave to appeal was brought out of time. Rule 49 (1) (b) of the Uniform Rules of Court provides that 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 days after the date of the order appealed against.

[10] The judgment in this matter was handed down on 5 September 2025. The application for leave to appeal was served on the respondents on 16 October 2025, as it appears from the CaseLines records. The applicant has not brought any application for condonation of the late filing, nor has any explanation been proffered for the delay. There also appears to be confusion on the date stamps on the Notice of Appeal on CaseLines which is 24 September 2025, however, the Court Online “NOTE” states that the document was filed on 7 October 2025. When the applicant addressed me on this issue, it appeared that he filed the document first with the Registrar in September 2025 and thereafter upon the respondents on 16 October 2025.

[11] The proviso to Rule 49 (1) (b) permits the court to extend the prescribed time period upon good cause shown. However, no such application has been made in the present matter. The respondents submitted that the application is, accordingly, not ripe for hearing and must be removed from the roll.

[12] I am mindful that the applicant is self-represented and that courts have, in appropriate circumstances, shown some leniency towards litigants in person who fail to comply strictly with procedural requirements. However, the failure to bring an application timeously and the absence of any condonation application presents a significant procedural hurdle. Nevertheless, given the importance of access to justice and the

relatively short period of non-compliance, I am prepared to condone the late filing and to consider the application on its merits. I caution, however, that this indulgence should not be taken as licence for continued non-compliance with the Rules of Court.

The legal framework for leave to appeal

[13] Section 17 (1) of the Superior Courts Act¹ provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[14] Section 16 (2) (a) of the same Act provides that when at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone. Section 17 (1) (b) further provides that leave to appeal may only be given where the decision sought on appeal does not fall within the ambit of section 16 (2) (a).

[15] The test for reasonable prospects of success requires consideration of whether there is a reasonable prospect that another court would come to a different conclusion. The threshold is not high, but the applicant must demonstrate more than a mere possibility of success. The prospects must be reasonable, which implies that there must be a sound, rational basis for the conclusion that there are prospects of success on appeal.

Analysis of the Grounds of Appeal

Ground 1: Failure to consider material facts and evidence

[16] The applicant contends that Acting Judge Moorcroft openly admitted that he had not read the papers and requested the respondents to explain what the case was about,

¹ Act 10 of 2013.

and that this constituted a denial of the applicant's right to be heard under section 34 of the Constitution.

[17] This ground of appeal is misconceived. The judgment against which leave to appeal is sought is my judgment of 5 September 2025 dismissing the Rule 42 application, not the judgment of Acting Judge Moorcroft of 28 March 2024. The order of Acting Judge Moorcroft was never appealed and remains extant. The applicant cannot, in the context of an application for leave to appeal against my judgment, seek to ventilate complaints about the conduct of proceedings before Acting Judge Moorcroft. Such complaints would have been appropriate grounds in an appeal against the order of Acting Judge Moorcroft, which appeal was never pursued.

[18] In my judgment of 5 September 2025, I specifically addressed the applicant's complaint regarding the proceedings before Acting Judge Moorcroft and found that, even accepting the applicant's version of events, his complaint did not constitute a ground for rescission under Rule 42. The applicant has not demonstrated any error in this reasoning. There are accordingly no reasonable prospects of success on this ground.

Ground 2: Reliance on evidence not before court

[19] The applicant contends that the respondents never filed an answering affidavit in the Rule 42 application and that I nevertheless relied on such affidavit and treated it as properly before Court. This ground requires careful consideration, as the applicant raises it as a basis for his appeal.

[20] The respondents served their answering affidavit on 7 May 2024, as appears from the documents on CaseLines and the papers before me. The answering affidavit was deposed to by Mr Xolani Nduna, an Acting Director of the first respondent, and was duly commissioned before a Commissioner of Oaths.

[21] Significantly, the applicant himself filed a replying affidavit dated 9 May 2024 in response to the respondents' answering affidavit. In that replying affidavit, the applicant engaged extensively with the contents of the respondents' answering affidavit, responding paragraph by paragraph to the allegations contained therein. The applicant cannot now

be heard to say that no answering affidavit was filed when he himself filed a comprehensive replying affidavit responding to that very answering affidavit.

[22] The applicant ought to have proceeded by way of Rule 30 prior to filing his replying affidavit if he wished to rely on this point. In any event, notwithstanding, who allegedly uploaded the affidavits onto CaseLines, this Court had a full set of papers upon which to rely in the main application. The substance of the affidavit makes clear that it was filed in response to the applicant's Rule 42 application, and the applicant treated it as such by filing a replying affidavit.

[23] The applicant cannot, at this late stage, rely on the purported absence of an answering affidavit when the record demonstrates that he received, engaged with, and responded to that very affidavit. This ground of appeal is without merit and discloses no reasonable prospects of success.

Ground 3: Mischaracterisation of the nature of rescission

[24] The applicant contends that I misconstrued his Rule 42 application as an impermissible rehearing of the merits. He relies on the Constitutional Court judgment in *Zuma v Secretary of the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*² for the proposition that rescission under Rule 42 (1) (a) is available where an order was erroneously granted, including where proper procedure was not followed.

[25] I did not hold that the applicant's application constituted an impermissible rehearing of the merits. Rather, I found that the applicant's complaint, even if established, did not constitute a ground for rescission within the meaning of Rule 42. The applicant's essential complaint was that Acting Judge Moorcroft did not read the papers before making his order. I held that this complaint, assuming it had merit, would relate to the manner in which the learned Acting Judge conducted the proceedings and exercised his judicial discretion, and that such concerns would ordinarily be addressed through the appellate process rather than by way of rescission.

² [2021] ZACC 28; 2021 (11) BCLR 1263 (CC).

[26] The applicant has not demonstrated any error in this reasoning. Rule 42 is not a mechanism for challenging the substantive correctness of judicial decisions; it is designed to address specific types of defects, namely orders granted in the absence of an affected party, patent errors or omissions in the order itself, or mistakes common to the parties. The applicant failed to establish any of these grounds.

[27] The reliance on the *Zuma* judgment is misplaced. That case concerned different circumstances and does not assist the applicant in the present matter. There are no reasonable prospects of success on this ground.

Ground 4: Failure to exercise Judicial discretion judicially

[28] The applicant contends that I failed to call for the transcripts of the proceedings before Acting Judge Moorcroft and that I only gave the respondents an opportunity to address me on costs, thereby denying the applicant the opportunity to be heard. He further contends that I failed to apply the *Biowatch*³ principle.

[29] At the hearing on 11 June 2025, both parties were afforded an opportunity to address the Court. The applicant was present and represented himself. He was given full opportunity to present his case and to respond to the submissions of counsel for the respondents. The suggestion that he was denied the opportunity to be heard is simply not borne out by the record.

[30] As regards the transcripts of the proceedings before Acting Judge Moorcroft, there was no obligation on me to call for such transcripts. The applicant, who bore the onus of establishing his case for rescission, could have obtained and filed such transcripts had he considered them material to his application. He did not do so. A court is not required to conduct investigations on behalf of litigants.

[31] The *Biowatch* principle, which concerns the allocation of costs in constitutional litigation against the State, has no application in the present matter. The Rule 42 application did not raise constitutional issues, and the respondents are not State organs in the relevant sense. Costs followed the result in the ordinary course, and there was no

³ *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC) ; 2009 (10) BCLR 1014 (CC).

basis for departing from that principle. There are no reasonable prospects of success on this ground.

Ground 5: Errors of Law

[32] The applicant contends that I erroneously stated that the urgent court may deal with matters as it deems fit, and that this misconstrues the nature of urgency management, which is administrative and does not displace the duty to ensure a fair hearing.

[33] The observation in my judgment that the urgent court may deal with its roll as it deems fit was made in the context of explaining the broad procedural flexibility that exists in the urgent court. It was not intended to suggest, and does not suggest, that the duty to afford parties a fair hearing is displaced. The applicant reads far more into this observation than is warranted.

[34] The applicant further contends that I erred in holding that his complaint did not constitute a patent error or omission under Rule 42 (1) (b). I dealt fully with this issue in my judgment, explaining that a patent error within the meaning of Rule 42 refers to an error as a result of which the judgment granted does not reflect the intention of the judicial officer, and that the error must be apparent from the face of the record and relate to the expression of the court's intention rather than to the substantive reasoning underlying the decision. The applicant's complaint did not fall within this category. There are no reasonable prospects of success on this ground.

The question of practical effect

[35] The respondents submit that even if the applicant were to succeed in an appeal against my judgment, such success would have no practical effect because the underlying order of Acting Judge Moorcroft, which dismissed the applicant's main application on the ground of jurisdiction, remains extant and has never been appealed.

[36] Based on the foregoing there is no need to make a finding on this submission.

Conclusion

[39] For the reasons set out above, I am not persuaded that the applicant has demonstrated reasonable prospects of success on any of the grounds advanced. The grounds of appeal are either misconceived, factually incorrect, or directed at the wrong judgment.

[41] No compelling reason has been advanced why leave to appeal should nonetheless be granted. The matter does not raise any novel or complex questions of law, nor are there conflicting judgments that require resolution by an appellate court.

[42] I am sympathetic to the applicant's position as a self-represented litigant, and I have endeavoured to give due consideration to all the grounds he has raised. However, sympathy for a litigant's circumstances cannot justify the grant of leave to appeal where no reasonable prospects of success exist.

Order

[43] In the result, I make the following order:

1. The application for leave to appeal is dismissed.
2. The applicant shall pay the respondents' costs of this application.



C READ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 29 January 2026

Date of Judgment: 06 February 2026

Appearances:

For the Applicant: Self-Represented

For the Respondents: Adv N Matidza

Instructed by: MJS Inc