



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Not Reportable

Case no: 1453/2022

In the matter between:

JUNÉ VAN DER MERWE

Applicant

and

ROAD ACCIDENT FUND

Respondent

Neutral citation: *Van Der Merwe v Road Accident Fund (Leave to Appeal)*
(Case no 1453/2022) (6 February 2026).

Coram: MAMOSEBO J.

Heard: 27 November 2025.

Delivered: 6 February 2026.

Summary: Application for leave to appeal – Reliance on s 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 – Whether the envisaged appeal has reasonable prospects of success and or – Whether there are compelling reasons for the appeal to be heard – Neither of the grounds are established – Leave to appeal is refused.

ORDER

1. The application for leave to appeal is dismissed with costs.
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JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Mamosebo J

- [1] The applicant, Ms Juné van der Merwe, is seeking leave to appeal to the Full Court of this Division against the whole of my judgment and order handed down on 8 August 2025, in which I dismissed her claim for damages in respect of injuries sustained in a motor vehicle accident. The respondent, the Road Accident Fund (RAF), is opposing the application.
- [2] The applicant relies on s 17(1)(a)(i) and (ii) of the Superior Courts Act¹ in her contention that the appeal would have reasonable prospects of success, and that there is a compelling reason for the appeal to be heard. Even where a court is unpersuaded of the prospects of success, it must nevertheless enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future

¹ 10 of 2013.

disputes.² Leave may also be granted where the interests of justice so demand, such interests constituting a compelling reason for the appeal to be heard.³ In determining whether leave to appeal should be granted, the merits of the appeal are of vital importance and will often be decisive.⁴

[3] The applicant's case, as I understood Mr De la Rey, rested on the opinion of the reconstruction expert, Mr Konrad Walter Lötter, damage to the vehicles, and the photographs. The main judgment tackled the issue of the evidence of the expert, whose evidence did not stand alone but also relied on the information of the insurance investigators who did not testify. There was no application to admit any portions of the evidence whose probative value depended on the uncalled witnesses as contemplated in s 3(1) of the Law of Evidence Amendment Act⁵. Of significance is that Ms Van der Merwe, as the driver of one of the vehicles, pleaded amnesia and had no recollection of the accident and whether she took any steps to avoid it. She sustained a fracture on her left hand, multiple fractures to the left lower leg involving her knee, and multiple fractures to the left foot. Surely, medical evidence was necessary to address her condition and the impact of those injuries to her recollection of the collision. No explanation was proffered why no medical evidence was adduced.

[4] The Supreme Court of Appeal (SCA) in the *Road Accident Fund v SM*⁶ cautioned in the following terms:

‘This case demonstrates the perils parties face when they rely exclusively on the opinions of experts without laying any factual basis for such opinions. In a trial action

² *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) para 2.

³ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) para 10.

⁴ See *Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others* 2016 (3) SA 317 (SCA) paras 23-24.

⁵ 45 of 1988.

⁶ (1270/2018) [2019] ZASCA 103 (22 August 2019) para 1.

“[i]t is fundamental that the opinion of an expert must be based on facts that are established by the evidence and the court assesses the opinions of experts on the basis of ‘whether and to what extent their opinions advanced are founded on logical reasoning’. It is for the court and not the witness to determine whether the judicial standard of proof has been met.”

- [5] The SCA in *PriceWaterhouseCoopers Incorporated and Others v National Potato Co-operative Ltd and Another*⁷ made the following insightful remarks:

‘... The basic principle is that, while a party may in general call its witnesses in any order it likes, it is the usual practice for expert witnesses to be called after witnesses of fact, where they are to be called upon to express opinions on the facts dealt with by such witnesses.’

- [6] The argument by Mr De la Rey that *Road Accident Fund v SM (supra)* involved two reconstruction experts, and the case before me only had one expert whose evidence was uncontested and must be admitted, is misplaced. I could not ignore the fact that the applicant (as the plaintiff in the impugned judgment) did not testify; some points were based on the information of insurance investigators who also did not testify; and her father’s evidence did not take the matter any further.

- [7] As the plaintiff, the applicant bore the overall onus of proof, which did not shift solely because the Road Accident Fund did not call any witnesses. The fact that absolution was not granted at the end of the plaintiff’s case does not mean that she had made a case then. The main judgment dealt with the issue of absolution and bears no repeating.⁸

⁷ [2015] ZASCA 2; [2015] 2 All SA 403 (SCA) para 80.

⁸ See *Van der Merwe v Road Accident Fund* (1453/2022) [2025] ZANCHC 74 (8 August 2025) paras 18-19.

[8] Having carefully and dispassionately considered this application,⁹ I am satisfied that there are no cognisable prospects of success nor compelling reasons that warrant the attention of the Full Court of this Division to entertain the envisaged appeal. It therefore follows that this application stands to fail. There is no reason why costs should not follow the result.

[9] In the result, the following order is made:

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



MAMOSEBO J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For applicant: Adv. H.E. De la Rey
Instructed by: Haarhoffs Inc.

For respondent: Mr. A. Mogano
Instructed by: The State Attorney

⁹ See *Smith v S* 2012 (1) SACR 567 (SCA); [2011] JOL 26908 (SCA) para 7.