



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

CASE NUMBER: 4795/2024

In the matter between

THEMBELANI BANZI

FIRST APPLICANT

109 FORMER WATERFRONT EMPLOYEES

SECOND APPLICANT

and

V & A WATERFRONT HOLDINGS (PTY) LTD

FIRST TO EIGHTEENTH

& 17 OTHERS

RESPONDENTS

Coram: Bhoopchand AJ

Heard: 12 February 2026

Reasons delivered: 16 February 2026

Summary:

Application for leave to appeal the Court's order granted in an application for default judgment against the Respondents. Grounds of appeal raised in an affidavit. An affidavit is not the form contemplated by Rule 49. Grounds of appeal were not directed to the Court's reasoning, the facts, or the application of the law

to the facts. The purported grounds of appeal are factual misstatements, irrelevant complaints, procedural misunderstandings, grievances about courtroom management, and personal attacks on the presiding officer. These are not appealable issues. Leave to appeal dismissed.

ORDER

1. The application for leave to appeal is dismissed with costs,
2. The Applicants shall pay the Respondents costs on an attorney-client scale,
3. The Court refers the conduct of the Applicant's attorney for further investigation by the Legal Practice Council.

JUDGMENT

on leave to appeal

BHOOPCHAND AJ:

1. This is an application for leave to appeal the judgment of this Court delivered on 20 September 2024.¹ The Court dismissed the Applicants application for default judgment with costs and ordered that a copy of the judgment be placed before the Legal Practice Council. The Applicants filed their unsigned application for leave to appeal which is dated 21 February 2025. In their notice of motion, the Applicants applied to the Judge President of this Division for condonation for the late filing of the notice, and for leave to appeal the whole judgment to the Full Bench. The notice states that the presiding officer 'not on term and not properly roped on the 18 September 2024' dismissed the application for default judgment.

¹ The presiding officer heard the application for default judgment as a Pro Bono, Ad Hoc, Acting Judge. References to 'chambers in the adjoining building' in the main judgment refer to the presiding officer's chambers as no court chamber was allocated to him for the hearing on the main application.

2. The reasons forwarded for the condonation sought for the late filing of the application for leave to appeal included the death of the Applicants leader, the appointment of another leader, the December court recess the difficulties of securing legal representation on contingency the reappointment of their attorney of record, and her inability to deal with the matter immediately because of other commitments. The Respondents opposed the application for condonation, but did not persist with it during oral argument on 12 February 2026. To the extent that this judgment should require it, the application for condonation was granted.
3. At this point, a summary of the events before the scheduled hearing is needed. On 7 May 2025, in line with this division's practice directions, the Court met in chambers with the parties, at their request, to agree on a date for hearing the application. The Applicants attorney insisted that the application had to be heard by the Honourable Judge President but could not cite authority for this assertion. The Court suggested a date in June 2025 to hear the application, but this was declined by the Applicants attorney. The Court directed the parties to agree to dates when the application could be heard. The Respondents informed the Applicants on 7 May 2025 of their preferred dates and indicated that they would be amenable to accommodating the dates provided by the Applicants attorney. The Applicants attorney informed the Applicants that the application had been addressed to the Honourable Judge President and they and the Judge should await the latter's directions.
4. On 12 and 18 September 2025, following inquiries raised in Parliament, two Courts within this division were requested to provide explanations regarding the matter at hand. The relevant explanations, along with a copy of the judgment, were submitted. Subsequently, the parties attended a meeting with the Honourable Judge President and the Honourable Acting Deputy Judge President in November 2025. At the request of the Honourable Judge President, the parties were invited to upload their documents to a newly established Caselines file. The

Court scheduled two additional dates for the hearing of this application in November and December 2025; however, the first date was unsuitable for the Applicant's attorney due to the passing of her father. The Court was puzzlingly accused of setting dates on days when the Applicants attorney was allegedly involved in trials in another division of the High Court.

5. The Applicants requested a date after the end of term in December which was unsuitable for the presiding officer. On 19 December 2025, the Honourable Judge President directed the Court to provide dates for the hearing of the application for leave to appeal and any other relevant issues that the Applicants wished to raise including an application for the recusal of the presiding officer. After availing the Court for further dates without any cooperation from the Applicants attorney, the Court finally directed on 9 January 2026, that the application would be heard on 12 February 2026. On 23 January 2026, the Registrar of the Civil section of this Division, informed the parties that no documents had been uploaded to Caselines. On 26 January 2026, the Applicants attorney informed the Registrar that her property had been involved in wildfires, and she was unable to engage in any work commitments until the emergency relating to the supply of water and electricity had been resolved. On 28 January 2026, the Respondents uploaded the Applicants papers onto Caselines. The Applicants attorney objected to the Respondents action on the same day, alleging that it was done without the Applicants consent. The attorney informed this Court's Registrar that the matter will be taken to the Constitutional Court. The Court has been copied into all emails referred to in this judgment by the parties to this application.

6. On 9 February 2026, the Applicant's attorney, Ms Thandiwe Moshabane attested to an affidavit averring that the Applicants had removed the application for leave to appeal from the Court roll. She provided nine grounds for the removal including the Applicants intention to apply for leave to the appeal to the Constitutional Court, the alleged removal of the Court file and the Applicants papers by the Respondents, the failure of the Court to respond to the Applicants

formal complaint, the request that the Applicants leave the Court premises when they enquired about their missing file, the request by the Honourable Judge President to all parties to file their documents on Caselines, and the Respondents uploading the Applicants papers without their consent on 28 January 2026. The Court directed on 2 February 2026 that the application will proceed and be finalised on 12 February 2026.

7. On 12 February 2026, the matter was called at 10h00. Neither Ms Moshabane nor the Applicants were in Court. The Court stood down to ensure that the Applicants were not delayed and confirm that there was no appearance for the Applicants. On resumption and while the Respondents Counsel was addressing the Court, two men appeared and signalled their wish to speak by raising their hands continuously, prompting the Court to ask Respondents Counsel to pause his address. The first person identified himself as the First Applicant, Thembelani Banzi. He stated in English that he was sent by Ms Moshabane to remove the matter from the roll and to ask the Court to refer it to the Constitutional Court. He referred the Court to Ms Moshabane's affidavit. The second person also indicated that he wished to speak but proceeded to address the Court in his home language. The first person then also insisted in addressing the Court in his home language. The Court stood down once again and made every attempt for the following hour to secure a Court interpreter to assist the two persons.
8. On resumption and after securing an interpreter with difficulty, the second person identified himself as the Second Applicant, Mr Vusile Cungcu. He asked for the same relief raised by the first Applicant. He declined to proceed with the application without legal representation, stating that they could not fund Ms Moshabane. After permitting the Applicants to fully address the Court, the Court explained why their request could not be granted as the application, together with any other issue that they wished to raise, had been set down to be heard. The Court intended to proceed as scheduled. The Applicants were given an opportunity to address the Court on the application for leave to appeal which they declined. The Court painstakingly explained the procedure that the

Applicants would have to follow before the matter could be considered by the apex Court. The Court warned the Applicants that they would not be permitted to disrupt the Court's proceedings as the Applicants did when the application for default judgment was heard. The Court then heard the Respondents Counsel.

9. The Respondents submitted that the Judge President had directed that the application for leave to appeal as well as all other issues that the Applicants wished to raise should be heard. This Court also directed that the application would proceed on the scheduled date. There was no application for the removal of the matter, nor an application for postponement. Apart from the application for leave to appeal, no other issue or application, including an application for recusal had been served or filed. Counsel contended that the application for leave to appeal was properly before the Court and the Court should dispose of it. Respondents Counsel submitted that the Court had no power to refer the matter to the Constitutional Court.

10. The Applicants twelve grounds of appeal were listed in the affidavit deposed to by the First Applicant on 19 March 2025. Rule 49 requires the Applicant seeking leave to appeal, to state its grounds of appeal. The affidavit is not the form contemplated by the Rule. The Court nevertheless extracted the grounds of appeal from the affidavit. The Applicants complained that the Court proceeded to hear the application for default judgment when the Applicants were not legally represented and thereby contravened sections 34 and 35(3)(k) of the Constitution. The Applicants complained further that the Court had handled the issue of the recordings in a manner that discriminated against them as unemployed pensioners and underprivileged persons whilst favouring the wealthy Respondents. The First Applicant made references to the Court proceeding without the papers of the Applicants, declining to hear the Rule 35(14) application, accepting the Respondents submissions on the Rule 35(14) application, and granting the Respondents an order to oppose the Rule 35(14) application. The Applicants allege that the Court was not properly constituted as there was no stenographer, Registrar and interpreter. The First Applicant alleged

that the Court erred in proceeding with the ‘not on term acting Judge who was not properly robed and was wearing his check jacket’. The Court was also accused of discussing the Applicants case with the Respondents Counsel and ‘blaspheming’ the Applicant’s attorney. The Applicants allege that the Court accepted the evidence of the Respondents and ignored the Applicants papers. The Respondents opposed the application for leave to appeal, contending that the Applicants failed to show the appeal would have a reasonable prospect of success in that a higher Court would reach a different finding as is required by section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013.

11. There are no compelling reasons for the appeal to be heard. The purported grounds of appeal have not raised a single error in the application of the law, any misdirection on the facts, the application of the law to the facts, or an irregularity that materially affected the outcome. The purported grounds of appeal are factual misstatements, irrelevant complaints, procedural misunderstandings, grievances about courtroom management, and personal attacks on the presiding officer. These are not appealable issues. The Applicants complaints about the Court declining to hear an application that was not properly before it, or that it proceeded in the attorney’s absence, or that the recording is managed in a way that the Applicant’s attorney did not like, falls within the Court’s discretion to regulate proceedings. Section 35(3) rights apply to accused persons in a criminal trial and not to civil matters. Neither were the Applicants section 34 rights affected during the hearing. The Court allowed the Applicants the opportunity to address it after the Applicants attorney left voluntarily, and some of them did so when they intervened and disrupted the Court. The Court gave them a hearing and explained its procedures. When the Applicants attorney failed to appear after the short adjournment granted to her, the Court placed the events that occurred in the main application on record. There were no discussions between the Court ‘blaspheming’ the Applicants attorney. The errors are those of the Applicants and not the Court.

12. The allegations of discrimination against ‘unemployed pensioners and underprivileged persons, is neither factual nor linked to the judgment. The complaint against the Respondents filing the Applicants papers without their consent is unsustainable. The Honourable Judge President directed that a Caselines file be opened. Applicants’ attorney indicated on 26 January 2026 that she was unable to engage in any work commitments. The Court had already directed on two occasions that the matter will proceed to finality on 12 February 2026. In these circumstances, the Respondents did not act irregularly in uploading documents that were already part of the Court file. The Applicants, notwithstanding the invitation extended to them, did not submit any additional matters or applications to the Court, including an application for recusal of the presiding officer.
13. The Court turns to address the allegation that the presiding officer was ‘not properly robed’ and appeared in a ‘check jacket’. The inclusion of a regrettably untrue assertion which was affirmed by the Applicants attorney when she prepared the notice of motion and referred to the grounds of appeal in her affidavit, impugns the dignity of the Court. The attorney made no attempt to correct a false allegation. The attorney, in addition, stated under oath that it was the First and Second Applicant’s instructions not to re-enrol the application for leave to appeal. The First Applicant stated in Court that he was sent by Ms Moshabane to remove the matter from the roll. The First and Second Applicants were communicating loudly with another person on their cellphones as they sat in Court. They stated that they could not afford to pay Ms Moshabane to appear for them. Ms Moshabane did not state in her affidavit, attested to a mere three days before the hearing that she would be absent from Court because of any financial difficulties on the part of the Applicants. The Court referred the default judgment to the Legal Practice Council. There was no feedback from the regulatory body regarding that referral. This judgment shall once again be referred to the Legal Practice Council for further investigation into the conduct of Applicant’s attorney.

14. In the premises, there are no cognisable ground of appeal and the application for leave to appeal must fail. The Respondents once again sought punitive costs as they did in the application for default judgment. The Court did not order punitive costs against the Applicants in the main application, but there is no reason to extend that discretion in this judgment. The Court makes the order that follows.

ORDER

4. The application for leave to appeal is dismissed with costs,
5. The Applicants shall pay the Respondents costs on an attorney-client scale,
6. The Court refers the conduct of the Applicant's attorney for further investigation by the Legal Practice Council.

Ajay Bhoopchand
Acting Judge of the High Court
Western Cape Division
Cape Town

Judgment was handed down and delivered to the parties by e-mail.

First and Second Applicants in person

Applicant's legal representative, Moshabane Attorneys, absent.

Counsel for the Respondents opposing this application: M Steenkamp SC

Instructed by Mcaciso Stansfield Inc.

