



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 4395/2023

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTION

APPLICANT

and

**MAINE MANAGEMENT & CHARTERED
ACCOUNTANTS (PTY) LTD**

RESPONDENT

Neutral citation: *The National Director of Public Prosecutions v Maine Management & Chartered Accountants (Pty) Ltd* (4395/2023) [2026] ZAFSHC 62 (19 February 2026)

Coram: MHLAMBI J

Heard: Matter disposed of without oral hearing in terms of s 19(a) of the Superior Court Act 10 of 2013

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h30 on 19 February 2026.

Summary: Application for leave to appeal and application to introduce new evidence – principles and requirements restated.

ORDER

The application for leave to appeal and introduce new evidence is dismissed with costs including counsel's fees on scale C.

JUDGMENT

Mhlambi J

[1] On 24 December 2024, I dismissed two applications under case numbers 4395/2023 and 4647/2023 for forfeiture orders with costs. This is an opposed application for leave to appeal the dismissal of the applicant's application with costs based on the following grounds:

'1 That the honourable court misconstrued the applicable standard of a balance of probabilities in rejecting the following evidence supporting the granting of a forfeiture order:

1.1 That Mokhooa refused to sign the requisitions because there was no proof that the Respondent rendered the services.

1.2 That Moilola did not sign the requisitions as herself but as Mokhooa.

1.3 That Mokhooa became aware of the payments being made through a colleague and upon following up, found her requisition book missing.

1.4 That Moilola was suspended as a result of her conduct with the Respondent.

1.5 That there is no evidence in line with the indigent policy to support that the performance of the Respondent was indeed reviewed.

1.6 That there was a total of nine tasks to be performed by the Respondent, yet the Respondent only attempted to provide proof of completing 1 task.

1.7 That the reason Mokhooa refused to sign any documentation relating to the indigent project was as she had explained to Moilola, that she will not be requisitioning payment where services were not rendered and she thereafter distanced herself.

2. In the light of the above, the Applicant discharged her onus on a standard of probabilities.

3. Having failed to find that there was a prima facie case against the Respondent, the court erred in failing to consider the evidentiary burden on the Respondent to prove that the proceeds were legitimate.

4. The Court erred in finding that the Respondent's version was not farfetched and fictitious. The reasons for that are as follows:

4.1 The Respondent alleged that Moilola, Khoale and Kunene attended the warehouse on 01 August 2023 to confirm that work was done in the absence of Mokhooa, whereas the payment requisitions were completed on 15 June 2023 and 27 June

2023, prior to the alleged inspection.

4.2 Some of the applications provided as proof contained duplicated applications.

4.3 Some of the applications provided as proof came from a period before the Respondent was awarded the tender.

4.4 The Respondent did not challenge the evidence that its officials attended the Municipal offices where they were handed boxes of indigent applications done by municipal officials.

5. The Applicant seeks leave to introduce new evidence at appeal since she is now in possession of the Municipal task team report into the conduct of the Respondent and the payments made to it, which report was provided to the Applicant on 11 September 2024 after the application had already been argued on 25 July 2024, the Applicant also made the report available to the Respondent on 11 September 2024. The report is attached to this notice as annexure A.'

[2] Section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 provides that leave to appeal may be granted only if the judge or judges concerned believe the appeal has reasonable prospects of success or there is some other compelling reason to hear it, including conflicting judgments on the matter under consideration. The applicant's main arguments have been addressed in the judgment. The supporting reasons in the application for leave to appeal do not strengthen the applicant's case. I am not convinced that there are reasonable grounds for success or that another court would reach a different conclusion in this case.

[3] The respondent correctly cited *Director of Public Prosecutions v Moyane* which held that the evidence presented by an applicant must establish that the money represented the proceeds of unlawful activities.¹ The proceeds in the matter at hand are of a lawful activity emanating from the contract to render services.

[4] It is common cause that the test for the admissibility of further evidence on appeal is well established, and the following requirements must be met: First, there must be a reasonably sufficient explanation, based on allegations that may be true, for why the new evidence was not led in the court *a quo*. Second, there should be a *prima facie* likelihood that the new evidence is true, and third, the evidence should be materially relevant to the outcome of the case. Further evidence should be allowed only in exceptional cases.

¹ *National Director of Public Prosecutions v Moyane* [2022] ZASCA 79.

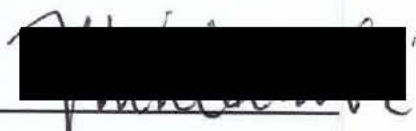
[5] The respondent noted that it was common cause that, on 25 July 2024, the applicant failed to file a postponement application to enable it to file a further opposing affidavit, as ordered by the court. Instead, the applicant informed the Court that the affidavit would not change its approach or attitude toward the case and that the money paid by the municipality constituted the proceeds of unlawful activities. The respondent further contended that the Task Team report attached to the application for leave to appeal as Annexure A was finalised on 12 July 2024. The applicant had sufficient time to present it to the Court, on 25 July 2024, but chose not to. Neither the applicant, the chairperson of the Task Team, nor an official from the municipality provided any explanation for why the Task Team report was only furnished on 11 September 2024.

[6] It is noteworthy that the Task Team report dated 12 July 2024, and presented to the city manager for consideration, records that, although the Task Team was provided with documentation showing that work was performed by the respondent, payments were made for a job not well done. Regarding the validity of payment approval, the Task Team agreed that there is no issue with the municipal delegations of authority for a senior official of the municipality to sign documents that are ordinarily signed or approved by a junior official, in cases where such a junior official is unable to sign such documents for whatever reason, so that the work of the municipality can continue without any hindrances.

[7] I am not persuaded that the new evidence the applicant seeks to introduce complies with the requirements stated above. The report neither supports the allegations of fraud and forgery nor negates the findings and conclusions in the judgment. Furthermore, the applicant has failed to show that exceptional circumstances warrant the admission of the evidence. Consequently, leave to introduce new evidence is denied.

[8] I, therefore, make the following order:

The application for leave to appeal and introduce new evidence is dismissed with costs including counsel's fees on scale C.


J J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

S Khumalo

Instructed by:

State Attorney, Bloemfontein

For the respondent:

S Reinders

Instructed by:

Matlho Attorneys, Bloemfontein.