



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER
JUDGES: NO
(3) REVISED. ✓

DATE: 16/02/2026

SIGNATURE

Case No. 2023-049353

In the matter between:

SELOTA MAMOLATELO

Applicant / Respondent

and

ADV JOSEPH MASLESA

Respondent / Applicant

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

The judgment and order are published and distributed electronically.

Summary;

Application for leave to appeal against summary judgment against attorney on claim for advocates fees. Leave to appeal sought inter-alia on issues not raised in plea. Leave to appeal dismissed.

PA VAN NIEKERK, J

INTRODUCTION:

- [1] Applicant applies for leave to appeal against summary judgment granted in favour of Respondent on 28 May 2025 in the amount of R2 423 100.00 (Two Million Four Hundred and Twenty Three Thousand and One Hundred Rands) with *mora* interest. This court handed down a judgment on 3 July 2025 (“the judgment”) which contains the reasons for such order.

- [2] Respondent applied for summary judgment against the Applicant after the Applicant served a plea to the Respondent’s particulars of claim on 4 September 2023, which plea was referred to in the judgment as a proverbial textbook example of a bald and sketchy plea.¹

- [3] The background to the summary judgment application is set out in the judgment *supra* and can conveniently be summarised as follows:
 - [3.1] Respondent rendered professional services to Applicant as an advocate. Respondent who was briefed by Applicant in various matters where Applicant instituted claims on behalf of claimants against the Road Accident Fund.

¹ *Judgment: para [15].*

- [3.2] Respondent rendered various invoices to the Applicant and was paid an amount of R1 520 000.00 leaving an outstanding balance of R2 423 100.00. Subsequently, Applicant was suspended on application by the Legal Practice Council but in the application it was common cause that Applicant remained liable for any proven outstanding fees owing to Respondent.
- [3.3] In the Plaintiff's Particulars of claim the Respondent specifically pleaded that, on the receipt of briefs and/or instructions from the Applicant, Respondent would complete such instruction for and on behalf of the Applicant and would perform the instructions at his agreed hourly rate *alternatively* his day fee.
- [3.4] Respondent further pleaded that, after having executed an instruction, *alternatively* from time to time, the Respondent would render an invoice to the Applicant in respect of his fees and on receipt of such fees the Applicant would effect payment of the invoices.
- [3.5] The Applicant's plea admitted that the Respondent was briefed from time to time, and would attend to the brief as instructed, and then pleaded that the Respondent would only send an invoice to the Applicant once a matter is settled with costs including counsel's fees, and that the invoice would be part of the party-and-party bill during taxation. Applicant then specifically pleaded that the Respondent is only entitled to what has been allowed by the taxing master during taxation.
- [4] In the judgment this court found that the Applicant's defence was bald and sketchy, that the Applicant failed to disclose a *bona fide* defence in that the Applicant did not provide sufficient facts to enable this court to enable whether the defence raised was *bona fide*, and

with reference to the applicable authorities² and the reasons why this court held that the defence was bald and sketchy are set out in paragraph 15 of the judgment.

[5] Against the aforesaid background, the Applicant applies for leave to appeal.

APPLICANT'S GROUNDS FOR LEAVE TO APPEAL:

[6] Applicant served a notice of application for leave to appeal dated 30 July 2025 which was only brought to the notice of this court by the registrar of this court during the latter part of January 2026. The Applicant's notice of application for leave to appeal consists of 29 paragraphs, each purporting to contain a separate ground for leave to appeal, as well as an additional four reasons which purportedly advanced reasons why another court "*could reasonably come to a different decision*". The application for leave to appeal has the following features:

[6.1] Whether the Applicant applies for leave to appeal on the basis that this court committed an error on the facts or an error on the law is not clearly specified.

[6.2] The notice contains a substantial number of basic grammatical errors, and some of the paragraphs simply makes no sense, considering the context of the applicable rule in terms of which summary judgment was granted, such as paragraphs 12, 16, 23 and paragraph 26.

[6.3] On a careful scrutiny of the stated reasons which purports to be grounds for appeal in the haphazardly formulated notice of application for leave to appeal it

² Judgment: paras 9, 10, 11 and 12.

appears that the Applicant attempts to rely on the following contentions that this court erred in granting summary judgment, namely:

- [6.3.1] This court should have upheld the Applicant's contention that there was an agreement that all invoices rendered by the Respondent would be subject to taxation and that only such amount as allowed by the taxing master, would have been paid to the Respondent after taxation (paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 10.4 and 23 of the notice of application for leave to appeal).
- [6.3.2] Mediation was a condition precedent to the institution of the summary judgment application (paragraph 11 of the notice of application for leave to appeal).
- [6.3.3] This court should have upheld the defence of prescription (which was raised for the first time in the Applicant's opposing affidavit in the summary judgment application) (paragraphs 13, 14, 15 and 27 of the notice of application for leave to appeal).
- [6.3.4] This court "*misdirected*" itself by not considering all the evidence, relying on allegations not part of the evidence, and by allowing a draft order prepared by Plaintiff in that application to be made an order of court in summary judgment applications.

SECTION 17 OF THE SUPERIOR COURTS ACT;

- [7] a perusal of the application for leave to appeal confirms that the application is brought under section 17(1)(a)(i) of the Superior Courts Act 2013. It is now trite law that an applicant in an application for leave to appeal faces a more stringent test under section 17(1)(a) of the Superior Courts Act compared to the Supreme Court Act 59 of 1959 and that a mere possibility of success, an arguable case or one that is not hopeless is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal³ and the legislature's use of the word "*would*" in section 17(1)(a)(i) of the Superior Courts Act imposes a more stringent and vigorous threshold.⁴
- [8] From the aforesaid authorities it follows that this court is enjoined not to grant leave to appeal unless the Applicant can show that there is a reasonable prospect, based on a sound rational basis, that another court will uphold the Applicant's grounds for leave to appeal and would not have granted summary judgment.
- [9] In the context of the Applicant's onus to show that there is a reasonable prospect, based on a sound rational basis, that another court will come to a different conclusion and would have dismissed the application for summary judgment, the grounds as advanced by the Applicant (insofar as it can be identified) and referred to *supra* is dealt with individually

FIRST GROUND: The court should have found that the accounts were subject to taxation:

³ *MEC for Health, Eastern Cape v Mkhitha* 2016 JDR 2214 (SCA) at paras [16] and [17].

⁴ *City of Johannesburg Metropolitan Municipality v Spectrum (Pty) Ltd and others* 2022 JDR 3708 (GJ) at paras [6] – [7].

[10] It is established law that the Applicant should have provided sufficient facts in the affidavit resisting summary judgment to convince this court that the “*taxation defence*”, is a *bona fide* defence. It is an established practice that advocates render invoices, based on actual work performed and prescribed rates, to their instructing attorneys, which forms part of attorney-client costs, and is not subject to taxation. The rendering of fees by advocates is subject to rules, based on reasonableness, reviewable in terms of the professional standards and rules that applies to the profession, and follows on a long standing tradition and practice between attorneys and advocates. In my view this practice is so well established that it needs no further elaboration. Notwithstanding, the Applicant’s affidavit resisting summary judgment provides no further elaboration why this established practice did not apply between the Applicant and the Respondent. It is *inter alia* for that reason that it was held that the defence of the Applicant and the summary judgment application was bald and sketchy. A perusal of the Applicant’s affidavit resisting summary judgment illustrate that Applicant simply repeated the contents of his Plea on this issue, with no factual averments to support the defence.

[11] Considering the fact that this defence flies in the face of established practice, is not supported by any extraneous facts, and raised in a sketchy manner in the opposing affidavit, there is no rational basis to find that a reasonable prospect exists that another court will uphold this defence.

SECOND GROUND: Mediation as a condition precedent:

[12] Mediation and/or a failure to mediate is not a bar to litigation. A failure to mediate may lead to adverse costs orders or a judge exercising a discretion to direct the parties to mediate, but does not set a legal bar to a claim. This issue was not pleaded in the Applicant’s Plea, was not raised in the affidavit resisting summary judgment, and has no merit.

THIRD GROUND: Prescription plea should have been upheld:

[13] As set out in the judgment, the Applicant's plea of prescription was not raised in his plea as is required in terms of section 17(2) of the Prescription Act, 68 of 1969 (as amended). Applicant was enjoined by virtue of the provisions of Rule 32(3)(b) to disclose fully the nature and grounds of the **defence as pleaded** and the **material facts relied on** which thus means that the plea of prescription, which was not pleaded, cannot be raised for the first time in the Applicant's answering affidavit resisting summary judgment.

FOURTH GROUND: The court misdirected itself:

[14] As a proverbial "*catch all*" the notice of appeal states that this court failed to consider all evidence. There is no elaboration on this ground as raised in the notice of application for leave to appeal. The notice further states that the court "*relied on allegations not part of the evidence*" without having defined what "*allegations*" was raised. Finally, the notice of application for leave to appeal contains the startling submission that this court misdirected itself by allowing a draft order by the Plaintiff in a summary judgment application. In my view, it is difficult to make any sense of that "*ground*" for leave to appeal.

CONCLUSION:

[15] Considering the aforesaid, I am of the view that there is no reasonable prospect that another court will come to a different conclusion having considered the pleadings, the application for summary judgment as well as the bald and sketchy defence raised by the Applicant in the affidavit resisting summary judgment, as result of which this court is enjoined by virtue of the provisions of section 17(1)(a) of the Superior Courts Act, 10 of 2013 to dismiss the application.

[16] The notice of application for leave to appeal is of such a poor standard that it offends the expectations of a reasonable standard of professionalism and competency expected from legal practitioners who ply their trade in the High Court. To make sense of the document, this court is expected to troll through a document which contains numerous grammatical errors and paragraphs which makes no rational point, in order to identify and categorise the individual grounds of appeal relied on by Applicant. The application includes a ground of appeal never raised before, without any explanation therefore, contrary to the most basic applicable principles. In my view, this document constitutes an insult to the legal profession, especially those practitioners who, on a daily basis, produce various legal documents of a high standard which serves to assist the court in resolving issues effectively. Those practitioners hardly ever receive recognition for their efforts, because a high standard is expected from them. For that reason, in my view, an atrocious document such as the Applicant's notice of application for leave to appeal should be sanctioned by an appropriate punitive costs order.

I therefore make the following order:

1. The application for leave to appeal is dismissed.
2. Applicant is ordered to pay the costs of the application for leave to appeal, taxed on scale B, on the scale as between attorney-and-client.



**P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA**

APPEARANCES

FOR THE APPLICANT: Adv P M Selego

INSTRUCTED BY: RAMMUTLA-AT-LAW INC.

FOR THE RESPONDENT: Adv L Strydom

INSTRUCTED BY: De Bruyn & Morkel Attorneys