

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

2025/143276

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

Date: 10 February 2025

MAURITS JAN VAN DE WETERING

First Applicant

BURKEA BELEGGINGS (PTY) LTD
Applicant

Second

And

LENTEGEUR WILDLIFE (PTY) LTD

First

respondent

JOHANNES THEODORUS STRYDOM (JNR)

Second

respondent

JOHANNES THEODORUS STRYDOM (SNR)

Third

respondent

JTJ RARE GAME (PTY) LTD

Fourth

respondent

JUDGMENT

DE VOS AJ

Introduction

- [1] This is an application for leave to appeal.
- [2] The applicants sought the final, alternatively interim liquidation, of the first respondent (“Wildlife”). This Court dismissed the application for liquidation. The applicants now seek leave to appeal against this Court’s refusal of the liquidation.

The parties

- [3] Wildlife has three directors, being the first applicant, the second and third respondents. The second applicant is a 50% shareholder in Wildlife, with the remaining 50% shares held by the fourth respondent. The dispute is between the three directors of Wildlife. The first applicant requested the Court to declare Wildlife insolvent. The other directors, the second and third respondents, opposed the application.

The grounds of liquidation

- [4] The basis of the application was twofold. First, the applicants alleged that Wildlife is factually and commercially insolvent, as it is unable to pay its debts as and when they

are due. Second, the applicants alleged that it is just and equitable as the first applicant is being excluded from the management of Wildlife and the second and third respondents are plundering the assets of Wildlife.

Legal Principles Applicable to Leave to Appeal

- [5] Section 17(1) of the Superior Courts Act 10 of 2013 provides leave to appeal may be granted only if the appeal would have reasonable prospects of success. An applicant for leave to appeal now faces a more stringent test than before. The test ensures that scarce judicial resources are not spent on appeals that lack merit.
- [6] Leave must not be granted unless there truly is a reasonable prospect of success. An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. 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 appeal.
- [7] Leave to appeal should be granted only when there is a sound reason and rational basis for doing so. In this regard it requires that the court test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether an appeal court would interfere in the decision against which leave to appeal is sought.
- [8] The phrase, reasonable prospects of success, entails a dispassionate evaluation, grounded on the facts and in law, that a court of appeal could reasonably reach a conclusion different to that of the trial court.
- [9] An appeal can only be noted against the judgment itself, not the reasons for the judgment, or the way the court arrived at the judgment. It is not sufficient for an

applicant to prove the court that it erred in fact and or in law, it must also show that the order would have been different if the court applied the correct law or facts.

[10] The Court will test the grounds of appeal against these principles. The grounds are grouped together according to themes.

The confirmatory affidavit

[11] The applicants requested the Court to admit a confirmatory affidavit. The applicants called it a confirmatory/service affidavit. At the hearing the applicants pressed that the affidavit was not more than a service affidavit and indicated that no leave to introduce the affidavit was sought or required, as it was merely a service affidavit.

[12] The Court rejected the characterisation of the affidavit and refused it being admitted.

[13] At the leave to appeal hearing, counsel for the applicants conceded that the confirmatory/service affidavit significantly expanded the list of creditors from the five which had been pleaded in the main proceedings, to twenty-one.

[14] The allegation in a liquidation application that the creditors had increased from five to twenty-one is a substantive allegation, not merely an affidavit showing service had been affected.

[15] At the hearing the Court made a ruling in this regard and permitted the applicants an opportunity to consider whether they wished to continue with the matter or seek a postponement to properly place these facts before the Court in a manner that permitted their opponents to respond. The applicants declined the invitation and requested the Court to continue with the matter.

[16] The Court is not persuaded another Court would come to a different conclusion in this regard. The Court is also not persuaded that even if a Court were to permit the affidavit it would alter the outcome.

The video and voice recordings

[17] The applicants contend the Court erred in finding the video and voice recordings as inadmissible. The recordings are admissible. There is nothing in the nature of the evidence of video or voice recordings that render them inadmissible. The applicants identified which aspects of the voice recordings they wished to rely on. The Court considered these and the respondents had an opportunity to reply to these allegations.

[18] However, the applicants' submission is that in addition to the allegations in the affidavits which sets out the exchanges in the voice recordings, the Court had to also listen to recordings.

[19] At the leave to appeal hearing the Court asked where the exchanges the applicants wished to rely on were on the affidavits. The applicants' position were that all the relevant exchanges were captured in the affidavits.

[20] It is therefore unclear, if the affidavits identified which aspects of the recordings the Court had to have regard to, what purpose listening to the recordings would have served.

[21] It is not for the Court to sift through recordings – where an opponent has not been alerted to what is relevant nor been provided an opportunity to respond to – to make out a case for the applicants.

[22] The ground of appeal does not bear prospects of success.

The management account

[23] The applicants took issue with the correctness of the respondent's management account. To address the criticism, the respondent filed a more up to date management account.

- [24] In response to the respondent filing a corrected management account, the respondents objected to the management account being admitted as evidence. The applicants submit that the corrected management account came late in the day – in a further supplementary affidavit. The applicants also submit that this affidavit was introduced without seeking leave to do so. These submissions are sound.
- [25] However, the Court must have regard to the relevance, weight and admissibility of the management account. The applicants' counsel at the hearing for leave to appeal accepted that the management account was relevant, of significant weight and was admissible.
- [26] As to prejudice, the applicants cannot claim any. They were unable to point to any prejudice suffered as a result of the lateness of the corrected management account – particularly as it was in response to the applicants' criticism of the earlier account. It was also undisputed that the applicants had access to Quickbooks which gave the applicants access to the management accounts. The corrected account was provided, admittedly late, but in response to the applicants' criticism and through a transparent process.
- [27] In addition, at the hearing, the Court admitted the management account and then provided the applicants an opportunity to consider their position. The Court adjourned and they were given a fair opportunity to consider their options. Again, they decided to persist with the hearing and not take the opportunity to file a further affidavit.
- [28] To date, the applicants have not alleged that the latest management account is incorrect. Their complaint lies against its belated disclosure, not its contents. To cure the belatedness of the provision of the management account, the Court gave the applicants an opportunity to seek a postponement – if there was such a need. The applicants elected not to.

[29] Another Court would not, in these circumstances, rule that a corrected and up to date management account is not to be admitted in a liquidation application.

Acts of insolvency

[30] At the hearing for leave to appeal the applicants asserted the Court's approach to considering the acts of insolvency – specifically the inability to pay debts – must be seen in light of the fact that the respondents' liabilities far exceed its assets. Of course, that reality only exists if one ignores the latest management account.

[31] The applicants' approach to acts of insolvency hinge on excluding the corrected management account. The Court has admitted the corrected management account which evinces a company with assets far exceeding its liabilities.

[32] There is no prospect another court will come to a different conclusion in this regard.

Just and equitable

[33] At the merits hearing, the first applicant submitted that it would be just and equitable to liquidate Wildlife as the first applicant has been excluded from management and the second and third respondents are plundering Wildlife's assets.

[34] The Court weighs that in its first financial year of operation, concluded on 28 February 2020, Wildlife's total hunting income amounted to R708 722.00. In the next financial year, concluded on 28 February 2023, the income increased dramatically to R16 596 391.00. In the unsigned financial statements for the year ending 29 February 2024, the revenue again increased to the amount of R18 882 412.00. According to the management report for the period 1 March 2025 to September 2025, yet another significant increase to the amount of R23 225 150.96 was achieved.

[35] Wildlife's business has shown consistent and substantial growth.

- [36] Not only has Wildlife's income been growing, it shows a net earnings of more than R 5 million, has assets close to R 12 million and sufficient to cover its current creditors. There is nothing on the papers, which indicates Wildlife is struggling to pay its debts.
- [37] The allegation that Wildlife's assets are being plundered is not supported by the objective facts.
- [38] The applicants have, consistently, at the merits and leave to appeal hearing, asserted their case with regard solely to their factual version of events. They have ignored, entirely, the respondents detailed pleaded accounts to counter each allegation of mismanagement.
- [39] The Court is not persuaded that another Court would come to a different conclusion in this regard.

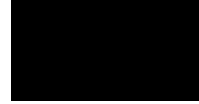
Costs

- [40] The court ordered the applicant to pay the costs. The court exercised a discretion and held that here is no reason why costs should not follow the result, here was no basis to grant costs on an escalated scale and whilst the papers were voluminous, there was nothing rendering it novel.
- [41] The applicants request leave to appeal in relation to costs. Costs is in the court's discretion; the matter is voluminous and raised various legal and factual complexities, and as such justified the costs of two counsel. There is no reasonable prospect that another court would come to a different conclusion.

Order

- [42] The court grants an order:

1. Dismissing the application for leave to appeal with costs on Scale B.



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be e-mailed to the parties/their legal representatives.

Counsel for applicants: JGC Hamman
Instructed by: Kriek Wassenaar en Venter Inc

Counsel for the respondents: C Acker
Instructed by: Swanepoel Van Zyl Inc

Date of hearing: 5 February 2026
Date of judgment: 10 February 2026