

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2022-23339

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

In the matter between:

P[...] M[...] OBO A MINOR

Applicant

and

MEC FOR HEALTH GAUTENG

Respondent

Delivered: 3 February 2026 – This judgment is handed down electronically by circulation to the parties' representatives via email and uploading it to CaseLines.

ORDER

1. The application for leave to appeal is dismissed.
2. Mr Selaelo Malatji is ordered to pay the respondent's costs *de bonis propriis* on the attorney and client scale, including the wasted costs of the appearance on 19 August 2025.
3. Mr Malatji is precluded from charging his client any fees relating to the application for leave to appeal.

JUDGMENT

BESTER AJ:

Introduction

[1] During the July 2024 recess, the applicant approached the court urgently for an interim payment to be made to her on behalf of her minor child in an action for damages against the respondent.

[2] I refused to finally enrol the matter for an urgent hearing and reserved the issue of costs. On 10 September 2024, I made the following order:

- a) The application is struck from the roll.
- b) Mr Selaelo Malatji is ordered to pay the costs of the respondent *de bonis propriis* on the attorney and client scale, including the costs of senior counsel.
- c) Mr Malatji is precluded from charging his client any fees relating to the bringing of this application.
- d) This judgment is to be brought to the attention of the South African Legal Practice Council.

[3] The applicant delivered an application for leave to appeal the whole judgment.

When leave to appeal may be granted

[4] Section 17(1) of the Superior Courts Act, 10 of 2013, stipulates when leave to appeal may be given:

- “(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that —
- (a) (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
 - (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and
 - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

[5] Section 16(2)(a) of the Superior Courts Act provides:

“(2) (a) (i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.”

[6] It is now settled that the interests of justice determine whether an order is appealable.¹ An order where a matter is struck from the roll for lack of urgency is to be considered on this basis.²

[7] In *UDM*³ the Constitutional Court approved of what was said in *Von Abo*⁴ where the Supreme Court of Appeal explained the approach to a decision whether an interim order is appealable:

“It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the right of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of peace meal appeals and the attainment of justice.”

The grounds of appeal

[8] The applicant sought to advance four grounds for the proposed appeal. I consider it necessary to set these out verbatim.

[9] The first ground raised was formulated as follows:

¹ *Tshwane City v Afriforum and Another* 2016 (6) SA 279 (CC) at paras [40] and [41].

² *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC); *Mtolo v Lombard and Others* 2021 JDR 3153 (CC).

³ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC) in para [42].

⁴ *Government of the Republic of South Africa and Others v Von Abo* 2011 (5) SA 262 (SCA) in para [17]

“3 The Court erred in struck off the matter with punitive costs and failed to consider the children's rights as enshrined in the Constitution and the Children's Act.

- 3.1. His Lordship Bester AJ did not properly follow the rules of the court, Children's Act and the Constitution where he was required to.
- 3.2. Acting Judge Bester's judgement contain most of the hostile reasons which were moot and influenced wrongly by incorrect judgement of AJ Goodman.
- 3.3. His Lordship should have granted the applicant orders sought and this Court was supposed to follow the principle of "stare decisis".

[10] The second ground raised was formulated as follows:

- “4. His Lordship erred in preferring incorrect judgement of AJ Goodman and disregarded the judgement of Justice Yacoob.
- 4.1 The Court failed to properly apply itself in relation to the evidence before it.
 - 4.2 Acting Judge Bester failed to consider all papers filed by the Applicant and the Court Orders on the caseline.”

[11] The third ground raised was formulated as follows:

- “5. His Lordship erred in finding that the Applicant has not made out a proper case for urgent interim payment.
- 5.1 The Applicant made proper case for urgent interim payment in terms of uniform rules, Constitution and Children's Act.
 - 5.2 The different court should have granted the orders sought in favor of the applicant.”

[12] The fourth ground raised was formulated as follows:

- “6. His Lordship failed to exercise judicial oversight where different Justice should have done so by not considering the Judgement of AJ Goodman which create wrong judicial precedent.
- 6.1 A different Judge would have exercised judicial oversight and ruled that the judgement of AJ Goodman is incompetent and

conflict with spirit of the rights in Children's Act and the Constitution.

6.2 In conclusion, the Applicant prays for order to be granted for leave to appeal the wrong judgement and its costs of the Acting Judge Todd."

[13] The grounds are the same as those used in the equivalent notice to seek leave against the order of Todd AJ, and substantially similar to the grounds raised in the notice to seek leave to appeal against the order of Goedhart AJ. The grounds continue with a familiar theme in this matter: an attack on the judgment by Goodman AJ. It is somewhat ironic that Mr Malatje, from the Bar, informed me that he has since commenced compliance with the order of Goodman AJ, by, inter alia, establishing a trust as she had directed. I have already set out in my reasons why there is no basis for the challenges to Goodman AJ's order, and that the urgent application was certainly not the place to do so.

[14] Furthermore, Mr Malatje did not address why the respondent's R2 million tender, as I found in my reasons, did not negate any need to approach a court urgently. It is an astonishing approach by Mr Malatje. Instead of accepting a R2 million tender as an interim payment for a child in need of medical care, cared for by an unemployed mother, he elects to spend months chasing an ever-elusive and unavailable interim payment of R13 million.

[15] It is not in the interests of justice to allow this appeal against an interim order. No considerations are weighing in favour of considering the order to be appealable. Unsurprisingly, therefore, Mr Malatje did not allege any such grounds in the notice of application for leave to appeal, and could not identify any from the bar.

[16] In any event, there are no reasonable prospects that a court on appeal would come to a different conclusion. There are no reasonable prospects of success on appeal.

[17] It became apparent during the argument that the application was driven by Mr Malatje, not his client, due to the costs order against him. He contended that the costs order was harsh against him, given that he acts in the matter under a

contingency agreement. Yet none of the grounds raised in the application for leave to appeal address the issue of the costs order.

[18] Although I gave Mr Malatje substantial leeway during the argument, he was unable to present a single argument in respect of any of the grounds of appeal raised in the application itself. Accordingly, there is no basis for me to add to the reasons I previously provided for striking the matter from the roll.

[19] I conclude that it is not in the interests of justice to allow an appeal against the order.

The attempt to raise further grounds of appeal

[20] In oral argument, Mr Malatje attempted to substantially add grounds of appeal to those contained in the notice. As Ms Rakgwale, appearing for the respondent, correctly pointed out, an applicant cannot merely raise new grounds from the bar but should seek leave to amend the notice of application for leave to appeal to incorporate them.⁵ Mr Malatje had made no such attempt. As a result, I do not deal with these aspects, which were clearly a response to the pinch of the shoe.

[21] One aspect raised from the bar by Mr Malatje bears mention. He made a last, desperate attempt to obtain leave by accusing me of corrupt activities under section 8 of the Prevention and Combating of Corrupt Activities Act 12 of 2004. The section, as its heading suggests, addresses offences relating to corrupt activities involving judicial officers.

[22] Mr Malatje did not identify the specific offence that may be contained in this section that had allegedly been committed. When asked what the basis was for this serious accusation, his answer was rather disconcerting. He contended that, because the applicant's case before the Urgent Court was unassailable, the only conclusion that could be drawn from the fact that the relief was not granted is that the Judge corruptly aided the respondent. In other words, he had absolutely no basis to make this accusation. This conduct is not becoming an officer of the court.

⁵ *Phiri v Phiri* (39223/2011) [2016] ZAGPPHC 341 (14 March 2016); *Xayimpi v Chairman Judge White Commission (formerly known as Browde Commission)* [2006] 2 ALL SA 442 E.

Costs

[23] In my reasons for striking the matter from the urgent roll, I addressed the question of when attorney and client costs and *de bonis propriis* costs may be awarded. I conclude that this is yet another instance where Mr Malatje should bear the costs of the application and may not recover any costs from his client.

[24] This application was previously enrolled for hearing on 19 August 2025. On the morning of the hearing, Mr Malatji did not appear, and I learned that he had sent a note from a medical practitioner to the respondent's attorneys shortly before the hearing. The matter was postponed to ascertain the circumstances of Mr Malatji's non-appearance. However, he did not deem his non-appearance a matter requiring explanation, even when questioned about it. In the circumstances, he should also personally bear the wasted costs. As one advocate ultimately opposed the application, I do not deem it appropriate to allow the costs of both counsel who appeared on 19 August 2025.

Conclusion

[25] In the result, I make the following order:

- a) The application for leave to appeal is dismissed.
- b) Mr Selaelo Malatji is ordered to pay the respondent's costs *de bonis propriis* on the attorney and client scale, including the wasted costs of the appearance on 19 August 2025.
- c) Mr Malatji is precluded from charging his client any fees relating to the application for leave to appeal.

A Bester
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

Heard on:
Judgment Date:

9 September 2025
3 February 2026

For the Applicant:

Mr S Malatji

For the Respondent:

Ms L Rakgwale, instructed by MBA
Incorporated
(Mr M Dlamini SC prepared the heads of
argument with Ms Rakgwale)