



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

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

SIGNATURE

DATE:

CASE NO: 2025-149911

In the matter between:-

FREDERIK JOHANNES VAN AS N.O.

First Applicant

FERDINAND SMARTENRYK DEVENIER N.O.

Second Applicant

JUANITA PETRA KERN N.O.

Third Applicant

(in their capacity as duly authorised trustees of the
Frikkie Van As Family Trust – IT: 2979/09)

FREDERIK JOHANNES VAN AS

Fourth Applicant

WYNAND LOMBARD

Fifth Applicant

JAMES ROBERT HALL

Sixth Applicant

ANDRÉ THERON

Seventh Applicant

and

ESKOM HOLDINGS SOC LTD

First

Respondent

(Reg. No.: 2002/015527/30)

HARMONY GOLD MINING COMPANY LIMITED

Second Respondent

Reg. No.: 1950/038232/06)

RANDFONTEIN ESTATES LIMITED

Third Respondent

(Reg. No.: 1889/000251/06)

SKY-TRADE 101 (PTY) LTD trading as JUST PROPERTY

Fourth Respondent

(Reg. No.: 2020/900657/07)

WILLEM JACOBUS VENTER N.O.

Fifth

Respondent

SYBRAND ALBERTUS TINTINGER N.O.

Sixth

Respondent

PETER CLAUDE PAYNE N.O.

Seventh Respondent

(in their capacity as trustees of the Deelkraal

Behuizing Trust – IT: 4808/08)

Neutral Citation: *Frederik Johannes Van As and Others v Eskom Holdings Soc Ltd and Others (149911/2025) [2026] ZAGPJHC.... (2026/02/16)*

Coram: Allen AJ

Heard: 12 February 2026

Delivered: 16 February 2016 – this judgment was handed down electronically by circulation to the parties' representatives by email and by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is due to be 14:00 on 16 February 2026.

SUMMARY: Application for leave to appeal an order in an urgent application-condonation sought for the late filing of the application – good cause and prospects of success - Section 17(1)(a)(i) and Section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013 - applicants now face a higher and a more stringent threshold – interests of justice to grant leave to appeal - leave to appeal dismissed

ORDER

1. The application for leave to appeal does not succeed and is dismissed.
2. The applicants, jointly and severally, are to pay the costs of this application.

JUDGMENT (LEAVE TO APPEAL)

ALLEN AJ

INTRODUCTION

[1] This is an application for leave to appeal against the order dismissing the urgent application on the merits with costs, including the costs of two counsel, to the Supreme Court of Appeal, alternatively to the Full Court of the Gauteng Division of the High Court, Johannesburg.

[2] The applicants launched an urgent application on 10 September 2025 in this Court seeking an interdict to compel the first respondent, Eskom, to immediately restore the electricity supply to the properties and businesses situated on R/E of Portion 10 (a Portion of Portion 3), Portion 11 (a Portion of Portion 10) and Portion 22 (a Portion of Portion 10) of the Farm Deelkraal 142, the whole of Deelkraal.

[3] The interdict also included the installing or repairing of infrastructure by first respondent to permit or allow electricity supply experienced prior to termination. First respondent, lastly, also be interdicted from terminating electricity supply to the whole of Deelkraal pending the finalization of applicants' application and a review application to be brought to review and set aside first respondent's decision to terminate the electricity supply.

[4] First respondent opposed the application. No relief was sought against any of the other respondents. The second, third and fourth respondents filed notices to abide.

[5] My order of 10 September 2025 reads as follows:

- “1. The forms and service provided for in the Rules of this Court are dispensed with and this matter is heard as one of urgency in terms of the provisions of Rule 6(12).
2. The First Respondent’s application for condonation for the late filing of the answering affidavit is granted.
3. The application on the merits is dismissed.
4. The Applicants are ordered to pay the First Respondent’s costs, such costs to include the costs consequent upon the employment of two counsel.”

[6] On 12 September 2025 I received a request for reasons from the applicants’ attorneys for the following prayers:

- “3. The application on the merits is dismissed.
5. The applicants are ordered to pay the First Respondent’s costs, such costs to include the costs consequent upon the employment of two counsel.”

[7] My reasons and judgment were handed down on 26 September 2025.

[8] The applicants apply for leave to appeal against my judgment in terms of Section 17(1)(a)(i), reasonable prospects of success, or Section 17(1)(a)(ii), compelling reasons, of the Superior Courts Act, Act 10 of 2013 and the interim interdictory interdict is appealable as it would be in the interests of justice.

[9] In the application applicants alleged numerous grounds for the said application and raised 15 points wherein I erred. Nothing new has been raised by the applicants. In my reasons, I have dealt with most, if not all, of the issues raised by the applicants and it is not necessary for me to repeat those in full.

[10] The application for leave to appeal was launched on 27 October 2025 outside the period provided for in Uniform Rule 49(1)(b). The applicants, by way of a

separate application, consisting of 93 pages, also applied for condonation for the late filing of the application for leave to appeal which is opposed by first respondent.

[11] I was also informed that applicants brought a review application against first respondent to set aside the decision “to terminate electricity supply to certain portions of the Farm Deelkraal 142”. The review application is not before me, but I have noted that the relief sought in the main application was for the whole of Deelkraal.

DISCUSSION

Condonation

[12] Rule 49(1)(b) of the Uniform Rules of Court reads as follows:

“When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within fifteen days after the date of the order appealed against: Provided that when the reasons or the full reasons for the court’s order are given on a later date than the date of the order, such application may be made within fifteen days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of fifteen days.”

[13] The application for leave to appeal was delivered some six days out of time. In the application for condonation, applicants dealt with the extent of the delay, reasons for the delay, the importance of the case and prospects of success. Applicants allegedly forwarded the reasons to applicants’ counsel on 29 September 2025 via email with an instruction to furnish applicants “with a legal opinion on their prospects of success on appeal”. “Counsel apparently by mistake deleted the email to which the reasons were attached”.

[14] Applicants’ application was to be filed by 17 October 2025. Applicants’ attorney of record waited until 16 October 2025 to contact counsel to enquire about the legal opinion. It is applicants’ case that my judgment was again forwarded to

counsel who undertook to furnish his legal opinion on the prospects of success on appeal “as soon as practically possible”.

[15] Applicants have not proffered any substance confirming the email correspondence with their counsel to substantiate the allegations made. No proof was proffered confirming the first email to applicants’ counsel as well as the second email to applicants’ counsel, supported by delivery reports.

[16] It is common cause that applicants’ main application was brought on an urgent basis, however, applicants were silent in the condonation application about the delay between 26 September 2025 to 29 September 2025 when my judgment was allegedly forwarded to their counsel for an opinion and their silence between 29 September 2025 to 16 October 2025 when enquiry was made about the opinion. Applicants knew that there was only some 24 hours left to receive the opinion, consider same, take instructions, instruct counsel, if need be, consult, and proceed with an application for leave to appeal and to ensure filing thereof timeously.

[17] Counsel for the applicants allegedly provided his legal opinion on 23 October 2025 without any substance proffered to substantiate this allegation. A meeting was held with counsel on 24 October 2025 wherein he was instructed to proceed with the application for leave to appeal “on an urgent basis”. I have noted that almost a month lapsed since my judgment and the drafting of the application for leave to appeal in a matter where urgency was essential since the launching of the application.

[18] No explanation, substantiated by primary facts, was furnished for this delay for me to consider the reasonableness of the delay and if in the interests of justice to grant condonation.

[19] In the matter of *Knoop NO and Another v Gupta and Another* **2021 (3) SA 88 (SCA)** it was held on page 96:” [19] The general nature of the grounds for removal is such that they cannot be established directly. They are factual conclusions or inferences drawn from other proven facts. It is necessary for the applicant for removal to specify and establish by evidence the conduct on the part of the BRP that they say justifies an order for removal. Only if there is proper proof of the primary facts can the question of drawing an inference

properly arise. The drawing of inferences from the facts must be based on proven facts and not matters of speculation. As Lord Wright said in his speech in *Caswell v Powell Duffryn Associated Collieries Ltd* [1939] 3 All ER 722 (HL) ([1940] AC 152) at 733E – F: 'Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.'

[20] In the instant matter the only form of substance was a confirmatory affidavit filed by applicants' attorney of record and, although it is not the practice, an affidavit from applicants' counsel predicated on the factual matrix and urgency of this matter would have bolstered applicants' case. Applicants elected not to do so either. The closest one gets to an explanation for the delay is contained in the founding affidavit with a confirmatory affidavit.¹

[21] Applicants alleged that counsel was not available and involved in another matter and could not attend to the requested opinion. Applicants have not proffered any substance that an opinion was indeed requested.

[22] Applicants also took issue with the first respondent's legal fees and the affordability to settle same. The bill of costs of almost R 850 000.00 to be taxed is dated 14 October 2025 and served thereafter on a date not disclosed on the papers before me. It cannot be excluded that the service of the bill of costs triggered the alleged enquiry of counsel's opinion on 16 October 2025 since applicants allege that they "are potentially exposed to enormous costs should they not be allowed to appeal the order".

[23] In the matter of *Uitenhage Transitional Local Council v South African Revenue Service* **2004 (1) SA 292 (SCA)** on page 297 it was said: "[6] One would have hoped that the many admonitions concerning what is required of an applicant in a condonation application would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this Court: condonation is not to be had merely for

¹ *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* **(619/12) [2013] ZASCA 5; [2013] 2 All SA 251 (SCA) (11 March 2013)** ad para 13. See also *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* **(2014 (3) BCLR 265 (CC); 2014 (5) SA 138 (CC)) [2013] ZACC 52; [2013] ZACC 48 (13 December 2013)** where the dismissal of the condonation application of the SCA was considered by the CC and leave dismissed.

the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that, if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out".²

[24] In *Saloojee and Another NNO v Minister of Community Development* **1965 (2) SA 135 (A)** it was held on page 141: "...There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations *ad misericordiam* should not be allowed to become an invitation to laxity. In fact, this Court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are. (Cf. *Hepworths Ltd v Thornloe and Clarkson Ltd.*, 1922 T.P.D. 336; *Kingsborough Town Council v Thirlwell and Another*, 1957 (4) SA 533 (N))"³

[25] In the matter of *Lekhesa: In re Ngwenya v Trustees for the time being of Sishen Iron Ore Company Community Development Trust and Another* **(JA111/2022) [2024] ZALAC 11; [2024] 6 BLLR 585 (LAC); (2024) 45 ILJ 1220 (LAC) (26 March 2024)** it was said: "[14] The grant of condonation involves the exercise of a discretion, with a decision to condone a party's non-compliance with the rules of the court or directions constituting an indulgence granted by the Court. Such an application should be granted if, having regard to the particular circumstances of the matter, it is in the interests of justice to do so, and refused if it is not. To reach a decision, regard is to be had to factors including the nature of the relief sought, the extent and cause of the delay, the reasonableness of the explanation for the delay, the importance of the issue to be raised, issues of prejudice and the prospects of success. As a general proposition, the factors to be considered are not individually decisive of an application for condonation but are all considered to determine what is in the interests of justice".

² See also *Grootboom v National Prosecuting Authority and Another* **2014 (2) SA 68 (CC)** at para 22 to 23 and 51

³ See also *Darries v Sheriff, Magistrate's Court, Wynberg and Another* **1998 (3) SA 34 (SCA)**.

[26] Applicants have failed to give a reasonable explanation for the delay. The effect of the delay cannot be minimal since applicants brought an urgent application which also included relief for the transformer of which the costs in 2022 amounted to R 4.6 million. The bill of costs amounts to approximately R 850 000.00. The condonation has to be considered with applicants' possible prospects of success in the application for leave to appeal. There is greater possible prejudice to the respondents as, amongst other, legal costs continue to mount, the recovery of which appears to be doubtful as the cancellation of leases amount to a loss of income for the applicants.

[27] I find the conduct of applicants' attorney of record and counsel questionable and does not meet the threshold to justify sufficient cause for granting condonation. Applicants cannot escape the conduct of their chosen legal team.

[28] Applicants failed to make out a case for the relief sought. No good cause has been shown for the exercise of the court's discretion. I am not convinced that the applicants' intentions were clear all along to prosecute the matter predicated on the disclosed circumstances.

Adequate Notice

[29] For the sake of completeness, the notice to Me Jacobs and the Deelkraal community reads as follows:

“HARMONY’S FINAL NOTICE TO TERMINATE SUPPLY OF ELECTRICITY AT DEELKRAAL POINT OF DELIVERY

1. Eskom would like to inform you that Harmony has sent through a Final Notice to terminate supply of electricity to the Deelkraal Point of Delivery (POD), as their Deelkraal Mine at Kusasalethu Operations no longer requires the electricity supply from their Deelkraal (POD).

2. You are therefore most welcome to contact Eskom to discuss and engage on different options in this respect for failure to do so may lead to the switch off of the electricity supply to your village when the termination notice comes to an end.

3. I hope you find this to be in order.

David Mnqwazana

Manager Key Accounts

Gauteng Cluster

DISTRIBUTION

Megawatt Park Maxwell Drive Sunninghill Sandton

PO Box 1091 Johannesburg 2000 SA

Tel +2[...] w[...]"

[30] Second and third respondent filed an explanatory affidavit which succinctly stated that first applicant during May 2025 made certain voice recordings which were circulated in a Deelkraal Village Community Whatsapp group, 330 members, which, inter alia, stated: "Good morning Deelkraal, Frikkie van As here. It's four minutes past ten on this Saturday morning. **I see there are letters flying around here in Deelkraal, not that I pay much attention to them.** So, let me explain. A High Court order stands until it is set aside. If it is not set aside, it stands. ...Just like with the electricity in Deelkraal... **Eskom puts up letters. That has nothing to do with me. I have never in my life had a deal with Eskom.** The High Court order says Harmony supplies the electricity and water in Deelkraal and they must collect the money.... **So, if you want to hop, skip, and jump over that, go see John Mashete and ask him what's going on.**" (Emphasis added)

[31] Applicants rely on the lack of adequate notice which I accept will be considered in the review application. The applicants deny that they and Deelkraal received any notice regarding the termination of electricity. Predicated on the factual matrix before me the applicants and the Deelkraal community were aware and did receive notice. Whether it was a notice or adequate notice, no steps were taken. In addition, the community was invited to approach John Mashete themselves. Applicants' denial is without merit.

[32] I find it questionable that applicants collect the rent and thus receive an income from the leases, but the issues with the water and electricity were left to the tenants to address and solve themselves.

The relief sought by applicants were final in effect

[33] In the matter of *International Trade Administration Commission v SCAW South Africa* **2012 (4) SA 618 (CC)** it was held: “[59] I am satisfied that, although the interdict granted by the high court carries an interim tag, it is susceptible to an appeal. The decision on the lawful life span of the existing anti-dumping duty is not open to alteration by the court of first instance. It is final in effect. It is definitive of the rights of the parties on the duration of the anti-dumping duty and therefore has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[111] For all these reasons I think that the interdict improperly breached the doctrine of separation of powers which is an integral part of our Constitution. It was inappropriate for the high court to grant an interim order which invaded the terrain of the national executive function without appropriate justification.”

[34] In the instant matter there is no electricity supply agreement (“ESA”) between the parties. Applicants’ case is that first respondent must install or repair the infrastructure and first respondent’s case is the installation or repairs to the infrastructure and electricity supply forms part of a non-existent ESA. An order to restore or repair cannot be interim.

[35] In my judgment I have explained the relationship between the DB Trust and the Frikkie van As Family Trust and the court cases. Deelkraal, and specifically the DB Trust (fifth to seventh respondents), is embroiled in a flurry of court cases among the beneficiaries of the DB Trust which include an application to have the current or new trustees removed as trustees of the DB Trust and an interim order since October 2024 to not dissipate any assets of the DB Trust. It is not known if the trustees were successfully removed.

[36] Applicants do not represent the whole of the Deelkraal community, representation of the community or who represents which portion of the community is not certain. During argument I was informed applicants claim no rights as consumers and only relied on PAJA.

[37] Section 21(5) of the Electricity Regulation Act 4 of 2006 (as amended) reads as follows: “21 **Powers and duties of licensee**

(1) A licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer any such power or duty to any other person without the prior consent of the regulator.

(2) ...

(3) ...

(4) ...

(5) A licensee may not reduce or terminate the supply of electricity to a customer, unless

(a) the customer is insolvent;

(b) the customer has failed to honour, or refuses to enter into, an agreement for the supply of electricity;

(c) the customer has contravened the payment conditions of that licensee.”
(Emphasis added)

[38] At the hearing I exercised my discretion by proposing to the parties the immediate restoration of the electricity and for a period of 21 days only, which applicants asked to be extended to 30 days, to allow for the signing of an ESA with first respondent to normalize the relationship between the applicants and first respondent or Deelkraal and first respondent. The matter stood down for applicants to take instructions whereafter I was advised that they could not get hold of the third trustee and persisted with the relief sought. Due to the urgency of the matter, I found this questionable.

[39] Applicants further submitted at the hearing that the cost of repair of the transformer of the DB Trust should be borne by first respondent prior to immediate temporary restoration and entering into an ESA with first respondent. First respondent, on the other hand, submitted that the transformer repairs are catered for in an ESA which has to be entered into prior to effecting any repairs. Without an ESA

billing and liability remain an issue. This meant such an order as I proposed could not be adhered to. The transformer supplies electricity to the whole of Deelkraal and first respondent prepared a draft order, read out in court, which made provision for the repairing of the substation/transformer, etc. by the DB Trust. This did not find favour. I have also proposed to the parties to contribute 50/50 towards the repairs in the interim in an attempt to restore the electricity supply. This did not find favour either.

[40] I have dealt with the interdictory relief in my judgment. The repairs to the transformer, even without any agreement in place, cannot be *pendente lite* or restoring the *status quo ante* as same will be final in nature and the costs thereof not recoverable from applicants or any other party. A tender for the repairs, or a portion thereof, from applicants remain absent.

The balance of convenience favours first respondent

[41] Deelkraal is embroiled in a flurry of court cases among the beneficiaries of the DB Trust. The removal of the trustees remains undisclosed. I reiterate that first respondent cannot be expected to be strung along.

[42] In the matter of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* **2012 (6) SA 223 (CC)** on page 241 it was said: "[65] When it evaluates where the balance of convenience rests, a court must recognise that it is invited to restrain the exercise of statutory power within the exclusive terrain of the executive or legislative branches of government. It must assess carefully how and to what extent its interdict will disrupt executive or legislative functions conferred by the law and thus whether its restraining order will implicate the tenet of division of powers. While a court has the power to grant a restraining order of that kind, it does not readily do so, except when a proper and strong case has been made out for the relief and, even so, only in the clearest of cases.

[66] A court must carefully consider whether the grant of the temporary restraining order pending a review will cut across or prevent the proper exercise of a power or duty that the law has vested in the authority to be interdicted. Thus, courts are obliged to recognise and assess the impact of temporary restraining orders when dealing with those matters pertaining to the best application, operation and dissemination of public resources. What this means is that a court is obliged to ask itself not whether an interim interdict against an

authorised state functionary is competent but rather whether it is constitutionally appropriate to grant the interdict.”

[43] I am alive to the fact that the applicants have failed and/or refused to enter into an ESA. At the hearing my proposals also proved to be unsuccessful.

[44] It is applicants’ case that the costs of reconnection are “modest”. I am at variance with this view. Electricity in this matter cannot merely be reconnected at the point of delivery, even pending the outcome of the review application. I say so because the transformer is not in a working order and does not belong to first respondent or the applicants, but to the DB Trust. Put differently, even if first respondent is ordered to “flip the switch”, there will still be no electricity. No relief was sought against the DB Trust to effect the repairs to ensure possible reconnection.

[45] I find applicants’ approach questionable with the persistence that the first respondent is to restore or repair, including the replacing of the transformer of the DB Trust, at the point of delivery, at first respondent’s expense without any agreement in place to recover those costs.

[46] The first respondent is entitled by law to not supply electricity to applicants since any supply renders it unlawful. The applicants are ineligible to receive electricity and even if legible to receive electricity, same is not possible at this stage. First respondent’s prejudice outweighs the applicants’ prejudice.

APPEALABILITY OF THE ORDER

[47] I was informed the applicants pursued their Part B review application and filed a supplementary affidavit against first respondent. The review application is not before me for consideration.

[48] If, for the moment, it is accepted that applicants have made out a case for condonation and condonation should be granted it has to be weighed up against the applicants' prospects of success with the appealability of the order.

The test

[49] The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in the Superior Courts Act.

[50] In terms of Section 17 of the Superior Courts Act, 10 of 2013:

“(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 success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

- (b) “

[51] The word “would” in Section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013, was discussed in the matter of *Mont Chevaux Trust v Tina Goosen & 18 Others*⁴ as per *Bertelsman J*, held as follows: “It is clear that the threshold for granting leave to appeal against the judgement of a high court has been raised in the new Act. ...The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”⁵

⁴ Case No **LCC14R/2014, dated 3 November 2014** at para [6]

⁵ *Daantjie Community and Others v Crocodile Valley Citrus Company (Pty) Ltd and Another* **(75/2008) 2015 JDR 1534 (LCC)** at par 3. *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* **(19577/09) [2016] ZAGPPHC 489 (24 June 2016)** Para [25]

[52] The learned judge in the *Mont Chevaux Trust* matter, supra, indicated that the word “would” should include and be interpreted as a “measure of certainty” that another court could come to another conclusion. “Measure of certainty” should not be interpreted that another court will come to a *different conclusion* as a probability of success.⁶

[53] The courts as far back as 2013 in the *Mgezeni Gasbat Nxumalo v The National Bargaining Council for the Chemical Industry (NBCCI) and Others*⁷ summarized the approach one should follow in determining whether to allow an application for leave to appeal having due regard to the wording of Section 17(1)(a)(i) of the Superior Courts Act: “[12]...[3] The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgement that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in section 17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion.”

[54] “*Reasonable prospect of success*” was discussed in the matter of *MEC for Health, Eastern Cape v Mkhitha and Another* **(1221/2015) [2016] ZASCA 176 (25 November 2016)** at Para [17]: “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.”

[55] The statutory prerequisite derived from section 17(1)(a)(i) of the Superior Courts Act, is the prompt resolution of disputes where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some

⁶ *Van Zyl v Steyn* **(83856/15) [2022] ZAGPPHC 302 (3 May 2022)** at Para [11]

⁷ **JR1170/2013 [2016] ZALCJHB 212 (15 June 2016)**

legitimate dispute of law which would allow another court to come to a different conclusion.

[56] In *Ramakatsa and Others v African National Congress and Another* **(724/2019) [2021] ZASCA 31 (31 March 2021)** at para [10] the court expressed itself as follows on “reasonable prospects of success” as provided for in Section 17(1)(a) of the Superior Courts Act: “.... The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist”.

[57] In the case of *S v Smith* **2012 (1) SACR 567 (15 March 2011)** Plasket AJA (Cloete JA and Maya JA concurring) held as follows at para [7]: “What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal”.

[58] I, therefore, agree that there must be sound, rational, and compelling reasons that there are prospects of success on appeal before leave to appeal can be granted.⁸

[59] In an unreported judgment in *Notshokovu v S*⁹ at para [2] the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959.

⁸ See also *Bester NO and Others v CTS Trailers (Pty) Ltd and Another* **2021 (4) SA 180 (WCC)** ad para 5 and 6

⁹ *Notshokovu v S* (157/2015) [2016] ZASCA 112 (7 September 2016).

[60] The interests of justice were considered in the case of *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* **[2022] ZACC 34** where it was said: “[45] What is to be considered and is decisive in deciding whether a judgment is appealable, even if the *Zweni* requirements are not fully met, is the interests of justice of a particular case and whether or not an order lacking one or more of the factors set out in *Zweni* constitutes a “decision” for the purposes of section 16(1)(a) of the Superior Courts Act.¹⁰ Over and above the common law test, it is well established that an interim order may be appealed against if the interests of justice so dictate.¹¹ It is thus in the interests of justice that the impugned interim interdict is appealable on the allegation that the interdictory relief in question resulted in the infringement of the right to freedom of expression.” The right to freedom of expression was infringed resulting that it was in the interests of justice that an interim interdict was appealable.

[61] An interim interdict is generally not appealable. In the case of *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* **(CCT 232/19 and CCT 233/19) [2020] ZACC 10; 2020 (8) BCLR 916 (CC); 2020 (6) SA 325 (CC) (29 May 2020)** it was said: “[47] Turning to the present matter, it should be borne in mind that both applicants seek urgently to appeal an interim interdict, which is purely interlocutory in nature. An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action.¹² It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court’s decision when making its final decision and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.”¹³

“[49] The law concerning the appealability of interim interdicts is settled. Interim interdicts are generally not appealable.¹⁴ This is because interim interdicts are not final in nature; they are

¹⁰ *S v Western Areas* **[2005] ZASCA 31; 2005 (5) SA 214 (SCA)** at paras 26-8

¹¹ *Philani Ma-Afrika v Mailula* **[2009] ZASCA 115; 2010 (2) SA 573 (SCA)** at para 20

¹² See the remarks of Van Heerden JA in *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban* **[1986] ZASCA 6; 1986 (2) SA 663 (A)** at 681D-F and *Pikoli v President of the Republic of South Africa* **2010 (1) SA 400 (GNP)** at 403I.

¹³ *Pikoli* id at 404A.

¹⁴ *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation* **[2017] ZASCA 134; 2018 (6) SA 440 (SCA)** (*Cipla*) at para 19.

not determinative of the rights of the parties and do not have the effect of disposing of a substantial portion of the relief claimed.¹⁵ However, these reasons are not exhaustive.¹⁶ There are various other sound policy reasons for the general non-appealability of interim interdicts. One of these is that appeals are not entertained in a piecemeal fashion, as that would prolong the litigation, resulting in the wasteful use of judicial resources and incurrance of legal costs.”¹⁷

“[50] However, an interim order may be appealed if the interests of justice so dictate.¹⁸ Accordingly, the paramount test for the appealability of a particular interim interdict is whether it would be in the interests of justice for that interim interdict to be appealed in light of the facts of its specific case.¹⁹ As stated in *South Cape Corporation*, a court has a wide general discretion in granting leave to appeal in relation to interim interdicts.²⁰ The appropriate test for the appealability of an interim interdict was perspicuously laid out by Moseneke DCJ in *OUTA* where he affirmed that—

‘[t]his Court has granted leave to appeal in relation to interim orders before. It has made it clear that the operative standard is ‘the interests of justice’. To that end, it must have regard to and weigh carefully all germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relevant and important consideration. Yet, it is not the only or always decisive consideration. It is just as important to assess whether the temporary restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable.”²¹

“[51] Accordingly, in determining what the interests of justice demand, a court must have regard to, and carefully weigh, all relevant circumstances and factors. Undoubtedly, the relevant factors will differ based on the facts of each case. These non-exhaustive factors include:

¹⁵ *Nova Property Group Holdings v Cobbett* [2016] ZASCA 63; 2016 (4) SA 317 (SCA) at para 8. This principle was authoritatively set out in *Zweni v Minister of Law* [1992] ZASCA 197; 1993 (1) SA 523 (A) at 532J-533A. See also *Cipla* id at para 18 and *S v Western Areas Ltd* [2005] ZASCA 31; [2005] (5) SA 214 (SCA) (*Western Areas*) at para 20.

¹⁶ *Moch v Nedtravel (Pty) Ltd. t/a American Express Travel Service* [1996] ZASCA 2; 1996 (3) SA 1 (A) at 10EG.

¹⁷ *South African Informal Traders Forum v City of Johannesburg; South African National Traders Retail Association v City of Johannesburg* [2014] ZACC 8; 2014 (4) SA 371 (CC); 2014 (6) BCLR 726 (CC) (*Informal Traders*) at para 20(g).

¹⁸ *OUTA* above n 3 at para 24. See also *Informal Traders* id at para 17 which states that:

“Provided a dispute relates to a constitutional matter, there is no general rule that prevents this Court from hearing an appeal against an interlocutory decision such as the refusal of an interim interdict. However, it would be appealable only if the interests of justice so demand.”

And also *Philani-Ma-Afrika v Mailula* [2009] ZASCA 115; 2010 (2) SA 573 (SCA) at para 20.

¹⁹ *Informal Traders* above n 51 at para 20.

²⁰ *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977(3) SA 534 (A) (*South Cape Corporation*) at 545B-546C.

²¹ *OUTA* above n 3 at para 25.

- (a) The kind and importance of the constitutional issue raised;²²
- (b) the potential for irreparable harm if leave is not granted;²³
- (c) whether the interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review;²⁴
- (d) whether there are prospects of success in the pending review;²⁵
- (e) whether, in deciding an appeal against an interim order, the appellate court would usurp the role of the review court;²⁶
- (f) whether interim relief would unduly trespass on the exclusive terrain of the other branches of government, before the final determination of the review grounds;²⁷ and
- (g) whether allowing the appeal would lead to piecemeal adjudication and prolong the litigation or lead to the wasteful use of judicial resources or legal costs.²⁸

[62] In the instant case the grounds relied on are detailed in 15 points where I erred. First respondent gave notice with no reaction thereto. The Deelkraal community has no ESA with first respondent. Applicants, who do not represent the whole of Deelkraal, do not have an ESA with first respondent either. Applicants are conspicuously silent to settle the repairs, or a portion thereof to the transformer at the point of delivery.

[63] Applicants did not seek any relief against the owner of the transformer to ensure electricity can be received at the same point of delivery. Applicants ought to have enforced their rights by compelling the DB Trust to enter into an ESA with first respondent. In my view, it cannot be in the interests of justice for applicants to seek relief for the restoration or repairs at first respondent's expense without any right of recourse.

[64] The grounds raised are generalised, broad, technical, lacks merit and amounts to a duplication of arguments in the urgent application and was dismissed. The grounds were not supported by any evidence and were mere averments. In *T & M Canteen CC v Charlotte Maxeke Academic Hospital and Another* **(36830/2021)**

²² *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* **[2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC)** at para 55.

²³ *Machele v Mailula* **[2009] ZACC 7; 2010 (2) SA 257 (CC); 2009 (8) BCLR 767 (CC)** at paras 23-8.

²⁴ *OUTA* above n 3 at para 25.

²⁵ *Id* at para 26.

²⁶ *Id*.

²⁷ *Id*.

²⁸ *Informal Traders* above n 51 at para 20(g).

[2021] ZAGPJHC 519 (14 October 2021) it was held:” [8]. Not much needs to be said about these overly technical defences, which, in my view, are without merit. For starters, these are all issues which have already been decided in the main application. It does not behove the respondents to rehash the same defences, which this court has already found to be without merit. Importantly, as submitted by the applicant, restoring the occupation of the premises by the applicant cannot possibly be unlawful if it had been authorised by a Court of Law.”

[65] Applicants’ application does not have a reasonable prospect of success and no compelling reasons were proffered. Applicants’ grounds are without merit.²⁹

[66] To determine if leave should be granted in the interests of justice, the *Zweni* test has not been satisfied. In the case of *Ewels v Francis and Others (Leave to Appeal)* **(6497/2022) [2025] ZAWCHC 113 (17 March 2025)** it was said:

“29. In my view, the *Zweni* triad of attributes of an appealable order are signally absent in all three respects from the order which is the subject of this application for leave to appeal. The order is not final and definitive of any issue or portion thereof in the main action. Nor does it have the effect of disposing of any portion of the relief claimed in the main action, let alone a substantial portion thereof. The *Zweni* test for appealability not being satisfied, what remains to be considered is whether there are any other factors relevant to the interests of justice, that would tilt the scale in favour of the Applicant.”

[67] The order was final and not possible to restore the *status quo ante* pending the review application to be brought. The reasoning in *Ewels* cautions that appellate intervention is warranted where an interim order produces an injustice incapable of adequate correction at a later stage.

[68] In the instant case appellate intervention is not warranted as the order did not produce an injustice towards the applicants, on the contrary, an injustice will be produced towards first respondent if the order is to be overturned. The applicants’ alleged injustice is capable of adequate correction through the taking of steps as, for

²⁹In the matter of *Mothuloe Incorporated Attorneys v Law Society of the Northern Province and Another* **(213/16) [2017] ZASCA 17 (22 March 2017)** it was said by the SCA: “[18]... It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or a mere possibility of success.”

instance, I proposed at the hearing of the main application. Failing to do so renders the relief final.

[69] Applicants also took issue with my costs order. I confirm my reasoning in my judgment for the cost of two counsel. In many of the quoted cases where first respondent was involved, costs were similarly granted for two counsel, where so employed.³⁰

CONCLUSION

[70] From a helicopter point of view leave to appeal should not be granted. I am not persuaded that the issues raised by the applicant in the application for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. I am therefore of the view that there are not reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does not have a reasonable prospect of success and it is not in the interests of justice that leave should be granted.

COSTS

[71] During argument the parties argued for costs in the appeal and dismissal with costs respectively. Costs are to follow the result.

[72] In the result the following order is made:

ORDER:

1. The application for leave to appeal does not succeed and is dismissed.

³⁰ See for instance Eskom Holdings Soc Ltd and Another v Sonae Arauco (Pty) Ltd **2025 (3) SA 78 (SCA)** ad para 65

2. The applicants, jointly and severally, are to pay the costs of this application.

ALLEN AJ
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION JOHANNESBURG

For the Applicants: Adv. R Grundlingh
Instructed by: Scheepers & Aucamp Attorneys
For the First Respondent: Adv. SL Shangisa SC and L Rakgwale
Instructed by: Seanego Attorneys Inc
For the Second and Third Respondents: No Appearance
For the Fourth Respondent: No Appearance
For the Fifth, Sixth and Seventh Respondents: No Appearance