



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

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

DATE: 23/02/2026

SIGNATURE

CASE NO: 2025-027539

In the matter between:

**INSCAPE EDUCATION GROUP (PTY)
LTD**

Plaintiff / Applicant / Appellant

And

**Burden Swart & Botha
Attorneys, CAMPUS OF PERFORMING
ARTS (PTY) LTD**

Defendant / Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

The judgment and order are published and distributed electronically.

Summary: Application for leave to appeal. Held that notice of application for leave to appeal does not comply with R49(1) because grounds for leave to appeal not disclosed as required in terms of relevant rule. Application refused. "Grounds" as used in R49(1) interpreted.

PA VAN NIEKERK, J

INTRODUCTION:

- [1] Applicant applies for leave to appeal against the whole of the judgment and order of this court delivered on 17 November 2025 in terms whereof Applicant was ordered to pay to Respondent the amount of R3,185,232.02 with interests, and costs.
- [2] The aforesaid judgment and order were made on an application instituted by the Respondent wherein the order sought for payment of the aforesaid amount was based on arrear rentals. The Respondent's cause of action was found on three separate lease agreements in respect of premises situated respectively in Midrand, Durban and Pretoria, which lease agreements were concluded between Applicant as lessor and Respondent as lessee. The background to the conclusion of these lease agreements, and the relevant terms of the lease agreements for purposes of the relief claimed by Respondent in the application are set out in the judgment and need not be repeated herein.
- [3] In summary, judgment was granted against for Respondent against Applicant on the following facts:
- [3.1] Applicant was obliged to pay a fixed monthly amount of rental in respect of each separate agreement to Respondent, within a fixed period of time after rendering of an invoice. In terms of the evidence and supporting correspondence certain additional expenses in relation to the Applicant's occupation of the premises had to be paid to Respondent in addition to the rental.
- [3.2] The agreements each contained a time bar clause stipulating a period within which Applicant could dispute invoices sent by Respondent, and the agreements further included a clause excluding certain defences, such as a defence based on warranties and/or misrepresentations.

[3.3] The agreements all provided for a certificate signed by an auditor which would establish *prima facie* proof of the indebtedness of Applicant in the event of a dispute.

[4] In the application it was common cause that monthly invoices were sent to the Applicant in relation to each separate agreement, without Applicant disputing the invoices within the time periods as stipulated in the relevant time bar clauses, and it was only after the application was instituted that the Applicant raised certain defences to the Applicant's alleged indebtedness to Respondent in terms of the provisions of the agreements, which defences were summarised in paragraph [11] of the judgment.

[5] In the judgment it was held that the time bar clause prevents the Applicant to raise the issues in relation to the correctness of the invoices, that the agreement prevented the Applicant from relying on any alleged misrepresentations, that the Applicant failed to provide clear proof of fraud in respect of which the Applicant bore the onus, and the defences raised by Applicant in the answering affidavit were thus not upheld.

APPLICANT'S NOTICE OF APPLICATION FOR LEAVE TO APPEAL:

On 8 December 2025 Applicant delivered a notice "*Application for leave to appeal*" and therein set out fourteen numbered paragraphs which purports to be the "*legal and/or factual grounds upon which the Applicant relies on in support of the application for leave to appeal against the judgment and the order ...*". This notice has the following salient features:

[5.1] The notice is couched in general terms referring to errors and/or incorrect findings made by this court.

[5.2] The notice fails to provide the grounds, factual or legal, on which Applicant relies to illustrate any errors or incorrect findings in the judgments.

RULE 49(1):

[6] Rule 49(1) of the Uniform Rules of Court reads:

“49. *Civil appeals from the High Court.*

(1)(a) *When leave to appeal is required, it may on a statement of the grounds therefor be requested at the time of the judgment or order.*

(b) *When leave to appeal is required and it has not been applied for at the time the judgment or order is given, application for such leave, stating the grounds for the application, shall be made within 15 days after the date of the order appealed against”.*

[7] From a reading of the aforesaid rule it is clear that the notice of application for leave to appeal must contain a statement of the grounds upon which the Applicant relies for such leave to appeal. In an application for leave to appeal Rule 49(1) must be read in conjunction with section 17(1) of the Superior Courts Act, because the Applicant must set out grounds to illustrate that the Applicant satisfied the threshold test in terms of section 17(1) of the Superior Courts. In other words, Applicant has to provide grounds upon which this court must be convinced that an appeal would have a reasonable prospect of success because the Applicant carries an onus to display that there is a sound, rational basis to conclude that there is a reasonable prospect of success on appeal¹. 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.² To simply refer to certain findings as incorrect does not satisfy the aforesaid onus.

¹ *Member of the Executive Council for Health, Eastern Cape v Mkhitha* 2016 JDR 2214 (SCA) at paras 16 and 17.

² *City of Johannesburg Metropolitan Municipality v Specitrim(Pty)Ltd and Others* 2022 JDR 3708 (GJ) at paras 7 - 8

- [8] This principle was referred to *Songono v Minister of Law and Order*³ where the following was held in relation to the requirements of stated grounds for appeal in a notice in terms of rule 49(1):

"In attempted compliance therewith, the applicant filed a document headed 'Application for leave to appeal', in which he purported to set out the grounds upon which leave to appeal was to be sought. These so-called 'grounds' constitute a diatribe of some 17 pages criticising the judgment, analysing (at times incorrectly) setting out the evidence and the findings made, putting forward certain submissions and quoting various authorities. This lengthy, convoluted and at times disjointed criticism of the judgment did not clearly and succinctly spell out the grounds upon which leave to appeal is sought in clear and unambiguous terms – indeed, it serves more to deceive particularity as, during the course of argument, there were several points which the applicant's counsel, Mr Bursey, sought to raise which were not indicated in the document.

I am not aware of any judgment dealing specifically with grounds of appeal as envisaged by Rule 49(1)(b); however, Rule 49(3) is couched in similar terms and also requires the filing of a notice of appeal which shall specify 'the grounds upon which the appeal is founded'. In regard to that subrule it is now well established that the provisions thereof are peremptory and that the grounds of appeal are required, inter alia, to give the respondent an opportunity of abandoning the judgment, to inform the respondent of the case he has to meet and to notify the Court of the points to be raised ...

Mr Bursey suggested that grounds of appeal could be gleaned from the notice but that is not the point – the point is that the notice must clearly set out the grounds and it is not for the ground to have to analyse a lengthy document in an attempt to establish what grounds the Applicant intended to rely upon but did not clearly set out. On this basis alone the application seems to be patently defective and must be dismissed".

³ *Songono v Minister of Law and Order* 1996 (4) SA 384 (E) at 385 I-J.

[9] Relying on the aforesaid principle established in the *Songono* judgment, it has been held in various judgments that the grounds upon which an Applicant relies when applying for leave to appeal must be set out in the notice of application for leave to appeal.⁴ Considering the aforesaid authorities and a conjunctive reading of R49(1) with section 17(1) of the act, in my view the word “*grounds*” as used in R49(1) refers to sound rational statements, supported by fact and/or legal proposition, designed to illustrate an incorrect finding on fact or law in a judgment, and which illustrates a reasonable probability that a court of appeal will interfere with the finding. A mere statement that the court erred in respect of one or other finding in the judgment clearly does not constitute compliance with R49(1).

CONCLUSION:

[10] This court is unable to find that the applicant passed the threshold test for leave to appeal as set out in section 17(1) of the Superior Courts Act because the application for leave to appeal does not contain the ground the applicant is applying for such relief. Not only is this court unable to determine the reasons for the Applicant’s statement that the judgment and order are appealable, but neither will the Respondent be able to do so. This *lacuna* in the Applicant’s notice of application for leave to appeal therefore not only inconvenienced this court but prejudiced the Respondent.

⁴ *Kopano Uitkyk Farming Enterprise (Pty) Limited v National Government of the Republic of South Africa and Others* (3805/2022) [2025] ZAFCHC 51 (27 February 2025).

Hing v Road Accident Fund [2014] ZAWCHC 15; 2014 (3) SA 350 (WCC) at 353J.

Xayimpi v Chairman Judge White Commission (Formerly known as Browde Commission) [2006] 2 ALL SA 442 (E).

[11] Considering the aforesaid, the application must be refused.

PROSPECTS OF SUCCESS:

[12] Notwithstanding the aforesaid, I am of the view that it is appropriate to make the following remarks in relation to the Applicant's prospects of success on appeal namely:

[12.1] The Applicant's defences in relation to the time bar clause, misrepresentations allegedly made, and placing in dispute the contents and correctness of the invoices rendered by the Respondent are defences which are excluded in terms of the respective agreements. The Applicant's only escape from the provisions of the contracts will be, to have the contracts nullified with a finding of fraudulent misrepresentation. Applicant made an allegation of fraudulent misrepresentation only in relation to the Midrand agreement.

[12.2] Insofar as the Applicant attempted to rely on an alleged fraudulent misrepresentation, that issue has been dealt with in the judgment on the basis that the Applicant failed to produce any clear proof of fraud, and that the terms of the agreement (which do not refer to a Rand per square calculation of rental) in relation to the Midrand property in any event mitigates against the Applicant's version in that regard. This defence of the Applicant was in any event only raised against the Midrand lease. On the cumulative evidence, in my view there is no reasonable prospect that another court will find that the agreement was induced by fraud.

[13] Therefore, in my view there is no reasonable prospect that the Applicant will be successful on appeal.

COSTS:

[15] Respondent seeks costs on scale C. In my view there is no reason why costs should not follow the event and considering the Applicant's failure to comply with R49(1) with the resultant prejudice and inconvenience, I am of the view that scale C is appropriate.

Wherefore I 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 to be taxed on Scale C.



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

APPEARANCES

FOR THE APPLICANT:

Adv. Rip

INSTRUCTED BY:

BURDEN SWART & BOTHA Attorneys

FOR THE RESPONDENT:

Adv. Viljoen

INSTRUCTED BY:

JPA Venter Attorneys