



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

Case Number: 2024/021979

(1)	REPORTABLE: <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: <u>NO</u>
(3)	REVISED <u>NO</u>
<u>13/2/2026</u>	
DATE	SIGNATURE

In the matter between:

THOMAS SARE LESSING

Applicant

And

INDEPENDENT REGULATORY BOARD OF AUDITORS

1st Respondent

BARTHOLOMEW GORMLEY

2nd Respondent

JUDGMENT

MOTHA J

1. Following the judgment handed down on 24 October 2025, the losing party, the Independent Regulatory Board of Auditors (IRBA), lodged an application for leave to appeal on 12 November 2025. The victorious party, Thomas Sera Lessing, opposed the application and filed its heads of argument on 26

January 2026, without the benefit of having perused the applicants' heads of argument.

2. It is noteworthy that the applicant failed to file its heads of argument, necessitating the adjournment of the proceedings on 26 January 2026, much to the court's chagrin.
3. From the subsequently filed heads of argument, it became apparent that the applicant's case rested on Sub-Section 17 (1)(a)(i) and (ii) of the Superior Court's Act, ("the Act") 10 of 2013.
4. In my opinion, this leave to appeal pivots around two grounds. First, it is that the Court erred in its interpretation of the empowering provisions establishing IRBA's disciplinary powers and procedures.
5. Second, it is submitted that the Court erred in finding that the applicant had standing. In brief, those constituted the reasons for the application. Accordingly, the question before this Court is whether the applicant has made out a case warranting the attention of a full court or the Supreme Court of Appeal. To answer that question, this Court must examine the law as set out in subsections 17(1)(a)(i) and(ii) of the Superior Courts Act, 10 of 2013.

The law

6. Leave to appeal applications are regulated by Uniform Rule 49(1) of the Uniform Rules of Court together with ss16 and 17 of the Superior Court Act 10 of 2013. Uniform Rule 49(1)(a) and (b) read:

“(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 requested at the time of the judgment or order, application for such leave shall be made and the grounds therefore 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.”

7. With that background to leave to appeal applications, the next focus is sections 16 and 17 of the Superior Courts Act, which set out the court that must hear the application and the standard that must be applied in determining whether a superior court's attention is warranted.

8. Section 16(1)(a) reads:

“An appeal against any decision of a Division as a court of first instance lies, upon leave having been granted-

(i) If the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of

section 17(6) or..."

9. Sub-sections 17(1)(a)(i) and(ii) read:

"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..."

10. The court in *Mont Chevaux Trust v Goosen*,¹ when examining s17(1)(a)(i) of the Act, held:

"It is clear that the threshold for granting leave to appeal against a judgment 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."²

11. 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.

12. In unpacking the concept of reasonable prospects of success,

¹ 2014 JDR 2325 (LCC).

² Supra para 6.

the court in *Smith v S*³ held:

“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.”⁴

13. In *Fusion Properties 233 CC v Stellenbosch Municipality*⁵ the court held:

“Since the coming into operation of the Superior Courts Act, there have been a number of decisions of our courts which dealt with the requirements that an applicant for leave to appeal in terms of ss17(1)(a)(i) and 17(1)(a)(ii) must satisfy an order for leave to be granted.

The applicable principles have over time crystallised and are now well established. Section 17(1) provides in material part that...

It is manifest from the text of S17(1)(a) that an applicant seeking leave to appeal must demonstrate that the envisaged appeal

³ (475/10) [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) (15 March 2011).

⁴ Supra para 7.

⁵ (932/2019) [2021] ZASCA 10 (29 January 2021).

would either have a reasonable prospect of success or alternatively that there is some compelling reason why an appeal should be heard. Accordingly, if neither of these discrete requirements is met, there would be no basis to grant leave.⁶

14. When examining subsections 17(1)(a)(i) and (ii), the Supreme Court of Appeal in *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁷ enunciated:

“In order to be granted leave to appeal in terms of s17(1)(a)(i) and s 17(1)(a)(ii) of the Superior Courts Act an applicant for leave must satisfy the court that the appeal would have a reasonable prospects of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.”⁸

15. In *Ramakatsa and Others v African National Congress and Another*⁹ the court confirmed the decision in *Caratco* and held:

“Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted

⁶ Supra para18

⁷ (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020).

⁸ Supra para 2.

⁹ (724/2019) [2021] ZASCA 31 (31 March 2021)

where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice."

16. The applicant seems to be between two minds. First, it is submitted that the respondent lacked *locus standi* because the issue is not of public importance. In its prelude, the applicant writes:

"The court erred in finding that the first respondent, the applicant in the main application, had asserted public interest standing and that the matter was public interest litigation."

17. A few paragraphs later in its epilogue, the applicant submits:
- "In light of this, it is submitted that the resolution of the issues in the proposed appeal are of significance and public importance and merit the attention of the Supreme Court of Appeal."

18. In my view, this state of ambivalence points to a desire to obtain legal advice on the proper interpretation of APA as it stands. This view is founded on the applicant's statement that, for the reasons given above, the in rem aspects of the judgment and order affect not only future cases but also potentially matters already concluded, which may be subject to review proceedings.

19. IRBA's view, as set out above, is that the implementation of the judgment and order, in the event that it is upheld on appeal or

if leave to appeal is refused, will cause fewer matters to be resolved by way of the admission of guilt process, which could severely impact the IRBA's legislative mandate, operations, and financial sustainability.

20. In the matter of *JK Structures, CC v City of Cape Town and Others*, the court held:

"The implication in the sentence in the learned judge's observation in *Caratco* that I have underlined is that appeals are primarily meant to be about obtaining different results, not second opinions. Even if there is an important point of law or an issue of public importance in point, no purpose is served by it being reconsidered on that basis alone by another court on appeal if the prospect of interference with the judgment at first instance is remote. The filtering object of s 17(1) would be subverted were meritless questions sent on appeal when there was no compelling reason for the matter in question to deserve the attention of a higher court."¹⁰

21. Against that background, I am of the view that the application for leave to appeal must fail. The applicant should bear the wasted costs on 26 January 2026 and today's costs on Scale B.

Order:

The application for leave to appeal is dismissed with costs, including the wasted costs on 26 January 2026, on scale B.

¹⁰ Supra para 15.

A handwritten signature in black ink, which appears to be 'MP Motha', is written over a solid black rectangular redaction box. The signature is fluid and extends to the right of the box.

MP MOTH A
JUDGE OF THE COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPEARANCES:

Date of Hearing: 13 Febuary 2026

Date of Judgment: 13 February 2026

For Applicant: ADV H. SCHOLTZ
Instructed by JJR BOTHA ATTORNEYS

For 1st to 4th Respondents: ADV I. CURRIE
Instructed by: MATHOPO MOSHIMANE MULANGAPHUMA INC.

For 1st to 4th Respondents: ADV C. RIP
Instructed by: AJ STONE ATTORNEYS