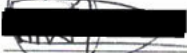




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2025/088498

(1)	REPORTABLE: YES <i>PLD</i>
(2)	OF INTEREST TO OTHER JUDGES: YES <i>NO</i>
(3)	REVISED <i>PLD</i>
<i>27/2/2026</i>	
DATE	SIGNATURE

In the matter between:

PLATMIN SOUTH AFRICA

1st Applicant

SOUTHERN SPHERE PLATMIN (PTY) LTD

2nd Applicant

And

SAMANCOR CHROME (PTY) LTD

1st Respondent

SYLVANIA METALS PROPRIETARY LIMITED

2nd Respondent

MINISTER OF MINERAL AND PETROLEUM RESOURCES

3rd Respondent

**DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL
AND PETROLEUM RESOURCES**

4th Respondent

**DEPUTY DIRECTOR -GENERAL OF THE DEPARTMENT
OF MINERAL AND PETROLEUM**

5th Respondent

JUDGMENT

MOTHA J

- 1) Dissatisfied with my judgment delivered on 12 November 2025, the applicants lodged this application for leave to appeal. Now, confronting this court are two legal questions: whether an interim order is appealable and whether the applicants have made out a case for leave to appeal.
- 2) Despite stiff resistance in a few cases,¹ the test for determining the appealability of an interim order enunciated in *Zweni v Minister of Law and Order*² has been supplanted. In the matter of *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*³ the court explained that:

“ In *Zweni*, it was held that for an interdictory order or relief to be appealable it must: (a) be final in effect and not susceptible to alteration by the court of first instance; (b) be definitive of the rights of the parties, in other words, it must grant definite and distinct relief; and (c) have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.”⁴
- 3) Critiquing the law as spelt out in *Zweni*, the court in *UDM* put paid to all debates about *Zweni*:

¹ Such as in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* (273/2022) [2023] ZASCA 63; 2023 (5) SA 163 (SCA) (5 May 2023)

² 1993 (1) SA 523 (A)

³ 2023 (1) SA 353 (CC)

⁴ *Supra* para 41.

“Whether an interim order has final effect or disposes of a substantial portion of the relief sought in a pending review is merely one consideration. Under the common law principle as laid down in *Zweni*, if none of the requirements set out therein were met, it was the end of the matter. But now the test of appealability is the interests of justice, and no longer the common law test as set out in *Zweni*”⁵

4) Penning this judgment, Madondo AJ said:

“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.^[28] 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. 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.”⁶

5) This decision has been cemented and reinforced in several matters, including in *City of Tshwane Metropolitan Municipality v Afriforum and Another*⁷, where the court said:

“The common law test for appealability has since been denuded of its somewhat inflexible nature. Unsurprisingly so because the common law is not on par with but subservient to the supreme law that prescribes the interests of justice as the only requirement to be met for the grant of leave to appeal. Unlike before,^[12] appealability no longer depends largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the

⁵ Supra para 43.

⁶ Supra para 45.

⁷ (157/15) [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC) (21 July 2016)

relief claimed in the main application. All this is now subsumed under the constitutional interests of justice standard. The over-arching role of interests of justice considerations has relativised the final effect of the order or the disposition of the substantial portion of what is pending before the review court, in determining appealability.”⁸

- 6) Writing for the constitutional court, with all ten judges concurring, Mogoeng CJ enunciated the law as follows:

“What the role of interests of justice is in this kind of application, again entails the need to ensure that form never trumps any approach that would advance the interests of justice. If appealability or the grant of leave to appeal would best serve the interests of justice, then the appeal should be proceeded with no matter what the pre-Constitution common law impediments might suggest. This is especially so where, as in this case, the interim order should not have been granted in the first place by reason of a failure to meet the requirements. The Constitution and our law are all about real justice, not mere formalities. Importantly, the constitutional prescript of legality and the rule of law demand that nobody, not even a court of law, exercises powers they do not have. Where separation of powers is implicated and forbids the grant of the order sought to be appealed against, the interests of justice demand that even an order that is not of final effect or does not dispose of a substantial portion of the issues in the main application, nevertheless be appealable.”⁹

- 7) Having examined the matter before me and having listened to both counsel, especially the submission that my first order has a final effect, I am of the view that it is in the interest of justice that the orders be appealable. Notwithstanding that, an application for leave to appeal rests on a totally different plane of existence. Accordingly, it does not follow that if an interim order is ruled to be appealable, leave to appeal would, *ipso facto*, be granted.

⁸ Supra para 40

⁹ Supra para 41.

8) In launching the leave to appeal, the applicants relied on ss 17(1)(a)(i) and (ii) of the Superior Courts Act, as reflected in ¹⁰Samancor and Sylvania's submission that leave to appeal should be granted on the basis that the appeal would have a reasonable prospect of success. Further, they submitted that there is compelling reason why the appeal should be heard, if the Court grants leave to appeal in respect of the order in the counter-application it should on that basis alone grant leave also in respect of the order in the main application, since if the appeal in respect of the counter-application is upheld the order in the main application will automatically have to be set aside¹¹.

9) There are four main grounds of appeal in respect of the counterapplication and the main application:

The first is the court's failure to consider the prospects of success in the review application;

The second is the Court's finding on the proper application of Trojan;

The third is the Court's finding on the accounting that was tendered;

The last is the Court's finding as to the effect on Samancor and Sylvania of requiring Samancor to process all material from Grootboom to less than 1mm.

10) The law as set out in ss17(1)(a)(i) and (ii) of the Superior Courts Act reads:

"Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(i) the appeal would have a reasonable prospect of success; or

¹⁰ The applicant's heads of argument para 16.

¹¹ Supra para 30.

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

11) Dealing with 17(1)(a)(i) of the Act, the court in *Mont Chevaux Trust v Goosen*¹² 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."¹³

12) Elucidating the postulation which is inculcated in examining reasonable prospects of success, the court in *Smith v S*¹⁴ 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."¹⁵

13) Emphasizing this point, the court in *Fusion Properties 233 CC v Stellenbosch Municipality*¹⁶

"The applicable principles have over time crystallised and are now well established... It is manifest from the text of s 17(1)(a) that an applicant seeking

¹² 2014 JDR 2325 (LCC).

¹³ Supra para 6.

¹⁴ (475/10) [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) (15 March 2011).

¹⁵ Supra para 7.

¹⁶ (932/2019) [2021] ZASCA 10 (29 January 2021).

leave to appeal must demonstrate that the envisaged appeal 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."¹⁷

14) In essence, it is not enough for a court to focus solely on 17(1)(a)(i). It must do more, as the Supreme Court of Appeal in *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*¹⁸ enunciated:

"In order to be granted leave to appeal in terms of s 17(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 prospect 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 discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.[3] Caratco must satisfy this court that it has met this threshold."¹⁹

15) The takeaway from *Caratco* is that even when s17(1)(a)(ii) is being examined, the merits of a case are of critical importance and are often dispositive of the matter.

16) When perusing the reasons for leave to appeal, it is patent that the judgment has traversed them at great length. Therefore, it would be otiose to regurgitate the judgment, save to say that the two applications are diametrically opposed to each other, despite being joined at the hip. If the main application is granted, *ipso facto*, the counterapplication cannot be ordered, *vice versa*.

¹⁷ Supra para 18.

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

¹⁹ Supra para 2.

- 17) Pending the review hearing and mindful of the potential of job losses, this court carved out what it considered to be a win-win situation. The court cannot pay lip service to the rule of law or promote a wanton disregard of the law. The separation of powers must be observed; the minister granted both parties rights to the same mine but for different minerals. Inasmuch as the applicants are entitled to mine platinum, the respondents are also entitled to mine PGMs.
- 18) Having listened to counsel, especially on the point that the court should have concluded that the applicants would prevail on review, I am satisfied that the appeal would have no reasonable prospects of success and that another court would not come to a different conclusion. This court sneaked a peek at the review and concluded that the Minister's decision was likely to be upheld. Accordingly, there is neither sound nor rational basis for concluding that there are reasonable prospects of success, nor have the applicants shown any.
- 19) Furthermore, there are no compelling reasons why the appeal should be heard.

Order

1. The application for leave to appeal is dismissed with costs, including costs of two counsel on scale C.

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 cursive.

MP MOTHHA
JUDGE OF THE COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPEARANCES:

Date of Hearing: 27 February 2026

Date of Judgment: 27 February 2026

For Applicant: ADV VAN VUUREN SC

With ADV B MKHIZE

Instructed by WHITE & CASE LLP

For 1st to 4th Respondents: ADV WESLEY SC

With ADV JR VERWAY

Instructed by: MALAN SCHOLES INC.