

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 082711/2023

DATE: 19-02-2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES : NO
(3) REVISED 20 March 2026 [REDACTED]

In the matter between

ABT TELECOMS (PTY) LTD

First Applicant

THULASIZWE GIFT NKUMANE

Second Applicant

and

NONKULULEKO ZAMAZINDLE MAKHAYE N.O. First Respondent

NONKULULEKO ZAMAZINDLE MAKHAYE Second Respondent

J U D G M E N T

LEAVE TO APPEAL

WATT-PRINGLE, J: In this matter the unsuccessful respondents a quo applied for leave to appeal. A number of arguments were advanced but the one which in my view determines the application is the respondent's (applicant for leave) point raised for the first time in the application for

leave to appeal.

Neither party raised it either on the papers or in the course of argument before me when the matter was heard on the merits. Section 78(1) of the Promotion of Access to Information Act 2 of 2000 provides that a requester or third party may only apply to a Court for appropriate relief in terms of Section 82 in the following circumstances, and subsection 78(1)(b) reads: after that requester or third party has exhausted the complaints procedure referred to in Section 77(A). Section 77A provides inter alia for a requester for information from a private body to complain to the Information Regulator in the event that the party from whom the information is sought does not accede to the request.

While it is true as pointed out by counsel for respondent (in the application for leave) that the reference of a complaint to the Information Regulator is not peremptory because section 77A(2) states that a party “may” submit a complaint, my reading of that provision is that a party whose request for information has been refused can either leave the matter there, or complain to the Information Regulator. It is in that sense not peremptory to complain to the Information Regulator.

But if you wish to apply to Court then you have to have gone through this particular step of making a complaint to the Information Regulator. That is the effect of section 78(1), as

I see it.

My hands are somewhat tied in the context of an application for leave to appeal, not only by the fairly clear wording of Section 78(1) but also by the judgment of Hopkins AJ in the matter of *Elite Plumbing and Industrial Solutions Pty Limited vs. Casper le Roux Inc Attorneys and Another*, 2023 JDR 0756 GJ where the learned Acting Judge held that Section 78(1) is peremptory and in circumstances somewhat similar to this matter, dismissed the application ultimately on that basis alone.

In the course of argument I raised with both counsel the question of whether Section 78(1) is somewhat contradicted by 78(2), specifically 78(2), (d) and (e) which state that a requester aggrieved by the decision of the head of a private body to refuse access in terms of Section 54, 56(1) or 60 or that is aggrieved by any decision of the Information Regulator, may by way of application within 180 days apply to a Court for appropriate relief in terms of Section 82. That on the face of it appears to give a party the right to apply to this Court in the circumstances postulated in (d) which is simply a refusal of a request for information. The word “or” after sub-section 78(2)(d) and before (e) suggests that the application could be made to court either after the refusal of the request for information (78(2)(d)(i)) or after one is aggrieved by the decision of the Information Regulator,

(78(2)(d)(i)).

It is an interesting argument, but the role of a Court is to try and reconcile such apparent anomalies. I consider that if it is an argument at all, it is one for the appeal court and not for me resolve in an application for leave to appeal. If anything this militates in favour of the granting of leave.

I do not think that this matter warrants the attention of the Supreme Court of Appeal. In the circumstances I intend to grant leave to appeal to the Full Court of the Gauteng Division of the High Court and I therefore make the following order.

Leave to appeal is granted against the whole of the judgment and order dated 28 November 2025. The costs of this application for leave to appeal are to be costs in the appeal.



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WATT-PRINGLE, AJ

ACTING JUDGE OF THE HIGH COURT

DATE: 20 March 2026

Date heard: 19 February 2026

Date of ex tempore judgment: 19 February 2026

Date judgment was revised and signed: 20 March 2026

Appearances

Counsel for the Applicant: A van der Merwe

Attorneys for the Applicant: BDK Attorneys

Counsel for the Respondents: P Carstensen SC (with him J Berger)

Attorneys for the Respondents: Edward Nathan Sonnenbergs Inc.