

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

Case Number: 2022/056983

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>25 March 2026</u>	
DATE	SIGNATURE

ZIQUBU SIKHOSIPHI First Applicant

ZIQUBU ZAMUKUHLE Second Applicant

RADEBE ETHEL Third Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY** Respondent

JUDGMENT IN THE LEAVE TO APPEAL

NTHAMBELENI, AJ

Introduction

[1] This is an application for leave to appeal against the whole of my judgment and orders granted on 5 December 2025. The applicants, Mr Ziqubu Sikhosiphi

(first applicant), Mr Ziqubu Zamukuhle (second applicant), and Ms Radebe Ethel (third applicant), seek leave to appeal to the Full Bench of this Division, alternatively, to the Supreme Court of Appeal.

- [2] The respondent is the City of Johannesburg Metropolitan Municipality (the City).
- [3] The applicants were the respondents in the main application that served before me on the urgent roll. In that application, the City sought an order discharging an interim interdict that was granted by Victor J on 15 June 2012.

Factual Background

- [4] This matter has a protracted history. On 9 May 2012, the Johannesburg Magistrate's Court granted an eviction order against the applicants who then launched rescission proceedings in the same court to rescind the order.
- [5] Before the rescission proceedings could be finalised, the applicants approached this Court on an urgent basis and obtained an interim interdict from Victor J on 15 June 2012, which suspended the execution of the eviction order pending the outcome of the rescission application.
- [6] The rescission application was ultimately dismissed by the Magistrates' Court. With the dismissal of the rescission application, the very foundation upon which the interim interdict was granted fell away.
- [7] Consequently, the respondent brought an urgent application before me to have the interim interdict discharged, arguing that there was no longer any legal basis for its continued existence.

The Judgment of 5 December 2025

- [8] In my judgment delivered on 5 December 2025, I granted the following orders:
 - (a) The time periods, forms, and manner of service provided for in the Uniform Rules of Court were dispensed with, and the matter was treated as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.

- (b) The late affidavit filed by the applicants was struck out for non-compliance with the rules, the Notice of Motion, and the Practice Directives of this Court.
- (c) The interim interdict granted by Victor J on 15 June 2012 under case number 2012/19433 was discharged and set aside.
- (d) The respondent, with the assistance of the Sheriff, was authorised to proceed with the execution of the eviction order granted by the Johannesburg Magistrate's Court on 9 May 2012 (case number 185331/2011) within a period of 15 (fifteen) court days from the date of the order.
- (e) The respondent was ordered to provide alternative accommodation to the applicants at the City of Johannesburg Region TEA at No 1[...], P[...] P[...], O[...] E[...], Soweto.
- (f) Each party was ordered to pay its own costs.

Proceedings after the Judgement of 05 December 2025

- [9] Subsequently after the judgement and order of 05 December 2025, an application for leave to appeal was filed on 29 December 2025, a period *of dies non*. This Court only became aware of the leave to appeal application on 03 March 2025, after correspondence from the Acting Deputy Judge President's (ADJP) office.
- [10] Upon receipt of the email of the correspondence and on 05 March 2025, this Court issued directives on the hearing dates and filing of the heads of argument by both parties. Only one party, being the City complied with the directives. The applicants did not comply and sought condonation for the late filing of their heads. Their application was not opposed and was heard during the commencement of the proceedings and was granted.

[11] Prior to the City being the applicant in the main action, brought an application in terms of section 18(3) of the Superior Courts Act¹ on an urgent basis before my brother Twala J, who ruled in favour of the City. However, this was not the end of the matter.

[12] The applicants filed leave to appeal Twala J's judgement to the Full Bench of this Division. The Full Bench ruled against the applicants, this judgment was delivered on 13 March 2026 with the court concluding that the judgement of this Court is unassailable and thus there are no prospects of success for the applicants on their leave to appeal Judge Twala's judgment. The full bench also made remarks regarding the main judgment of this court and the prospects of success on appeal.

Grounds for Appeal

[13] In their application for leave to appeal, the applicants state various grounds that I do not intend to repeat in this judgement. However, this judgement will demonstrate in clear terms the requirements to be met in an application for leave to appeal as well as sufficient grounds that must be met to pass the test. The test requires that sufficient grounds be established for leave to appeal to be granted.

[14] The pertinent question, therefore, is whether the applicant has satisfied the test for leave to appeal in this matter, based on the grounds as set out in their application for leave to appeal. In order to answer that question, it is necessary to consider the applicable test governing applications for leave to appeal.

Legal Principles governing Leave to Appeal

[15] Rule 49 of the Uniform Rules of Court dictates the form and procedure applicable to applications for leave to appeal, while the substantive legal requirements are set out in section 17 of the Superior Courts Act. The Act raised the threshold for the granting of leave to appeal. Leave may now only be granted where there is a reasonable prospect that the appeal would succeed. The former, more lenient test – namely, whether there was a mere possibility of

¹ 10 of 2013 ("the Act").

another court coming to a different conclusion, no longer applies. This position accords correctly with the submission made by counsel for the respondent.

[16] The proper requirement now is that there must be a sound, rational basis for the conclusion that there are prospects of success on appeal. This is the higher test that the respondent must satisfy to persuade this court.

[17] The test for granting leave to appeal is governed by section 17(1)(a) of the Act. Leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, such as conflicting judgments on the matter under consideration.

[18] Regarding the prospects of success, the Supreme Court of Appeal in *S v Smith*² held that the prospects must not be remote but must have a realistic chance of succeeding. An applicant must now convince the court that there is a sound, rational basis for the conclusion that there are prospects of success on appeal.

[19] As set out in *Mont Chevaux Trust v Goosen*,³ mere disappointment in the outcome or a belief that the court was wrong is insufficient. There must be a realistic chance of success, not merely an arguable case.

Evaluation of the Grounds of Appeal

[20] It is trite law that the purpose of an appeal is not to re-argue the matter afresh, but to establish proper grounds based on the above stated test and the law for the leave to appeal. This court appreciates that the counsel for the applicants was placed in an unenviable position of arguing the issues that the court has already decided.

[21] Although counsel advanced the grounds well, this Court is not persuaded that they establish a basis for leave to appeal. On the facts before the court *a quo*, the matter was correctly found to be urgent. The interim interdict granted by my Sister Victor J was, by its very nature, a temporary measure, operative only

² [2011] ZASCA 15; 2012 (1) SACR 567 (SCA).

³ 2014 JDR 2325 (LCC).

pending the finalisation of the rescission proceedings. It functioned merely as a safeguard, contingent upon the existence of those pending proceedings. As stated in *Herbstein & Van Winsen*,⁴ an interim interdict lapses once the main proceedings to which it is ancillary have been concluded. In this instance, the rescission application has since been dismissed. There is no evidence before this Court that an appeal against that dismissal has been noted, nor that the rescission application has otherwise been revived. In the absence of any pending proceedings to sustain it, the interdict cannot survive. Accordingly, this ground has no reasonable prospect of success.

[22] Once those proceedings were finalised, the legal basis underpinning the interdict fell away. Any continued suspension of the eviction order would have left the respondent in a state of legal uncertainty regarding its rights under the valid Magistrate's Court order. Thus, this Court was satisfied that such uncertainty and attendant prejudice constituted sufficient urgency to warrant dispensing with the ordinary time periods.

[23] The order of the Magistrate's Court of 9 May 2012 remains enforceable. The applicants have not provided any new facts or legal basis to justify its continued suspension. The provision of alternative accommodation by the respondent is a significant factor that mitigates the harshness of the eviction and demonstrates that the City has considered its constitutional and statutory obligations. The execution of a valid court order cannot be indefinitely postponed on the mere speculation that an appeal might be launched. An appeal against the dismissal of the rescission application does not automatically suspend the operation of that dismissal, nor does it revive the lapsed interdict.

[24] Counsel for the applicants on the appeal contended that the Court erred in striking out the applicants' affidavit in the main matter. It was submitted that the Court ought not have been "hamstrung by its own rules", and that a more generous approach should have been adopted to condone the non-compliance with the Rules in the interests of justice, with reliance placed on section 173 of the Constitution.

⁴ Cilliers *et al* *Herbstein & Van Winsen: The Civil Practice of the High Courts of South Africa* 5th ed (Juta 2009).

[25] Once again, the reasons for striking out the affidavits are comprehensively set out in my main judgement. In short, the applicants' answering affidavit was filed out of time, without any accompanying application for condonation, and in flagrant disregard of the time periods set out in the respondent's notice of motion and this Court's Practice Directives. The Rules of Court exist to ensure the orderly and fair conduct of litigation. A litigant in default cannot simply file papers at its convenience and expect the court to accept them, particularly in urgent proceedings where adherence to timelines is critical. In the circumstances, this ground of appeal bears no reasonable prospect of success. No court will countenance, under the guise of the interests of justice, a clear abuse of its own rules.

[26] It is important to at this juncture to refer to the argument advanced by counsel for the respondent in this appeal. Counsel submitted that, following the initial hearing of the main application in the urgent court, there was a lapse of a two day during which the applicants had more than sufficient opportunity to file a substantive condonation application. This they failed to do. Counsel for the applicants could not meaningfully address this deficiency on the case of the respondents. It is thus clear that, on any interpretation, the decision to strike out the affidavit was correct and valid in law.

[27] Counsel for the applicants referred this Court to authorities regarding the applicants' constitutional rights regarding their eviction. It is important to indicate that the applicants are unlawful occupiers of property owned by the respondent. They have no constitutional right ranking above that of the lawful owner of the property, being the respondent. The case authorities that this court has been referred to are clearly distinguishable as clear day light and pitch black darkness of the night.

[28] The court *a quo* was fully cognisant of the constitutional rights implicated in eviction proceedings, notwithstanding that the proceedings before it were not, strictly speaking, eviction proceedings. In particular, the Court was mindful of the right of access to adequate housing enshrined in section 26 of the Constitution. It is precisely for this reason that this Court, in its order of 5 December 2025, *mero motu* inserted paragraph 5, requiring the respondent to

provide the applicants with alternative accommodation prior to the execution of the eviction. This ensured that the order would be executed in a manner that is just and equitable, consistent with the principles articulated in *Occupiers of Erven 87 & 88 Berea v De Wet N.O.*⁵ The applicants' argument that the Court ignored their constitutional rights is therefore baseless and factually incorrect. On the contrary, the Court took active steps to safeguard those rights by making an order for the provision of alternative accommodation a precondition for eviction. Accordingly, this ground of appeal has no reasonable prospect of success.

[29] During submissions, I posed a hypothetical question to counsel for the applicants concerning the time period afforded for their eviction, namely the 15 (fifteen) days stipulated in the 05 December order. I enquired what alternative time frames, if any, could be suggested as reasonable in the circumstances. Counsel for the applicants was unable to propose any alternative period and did not meaningfully challenge the reasonableness of the 15-day period. Nor was any submission advanced as to what time frame would be suitable and appropriate for the applicants' relocation from the property.

[30] Counsel for the respondent submitted that the 15 (fifteen) day period cannot constitute a viable ground for leave to appeal. Having regard to the urgency of the matter and the facts before the Court, he contended that this period was more than sufficient to enable the applicants to vacate the premises. He further pointed out that this issue had previously been ventilated before Judge Twala, where it was clear that the applicants had been afforded 6 (six) weeks to vacate the City's premises, yet still regarded that period as inadequate.

[31] Counsel for the applicants advanced a further argument that, notwithstanding their disqualification due to their income, the respondent bore a duty to ensure that the alternative accommodation provided would be suitable for 9 (nine) persons. This argument is misplaced. There is no evidence that the respondent has proposed or provided accommodation that is inadequate. Any conclusion as to inadequacy is therefore speculative and unfounded. As correctly submitted by counsel for the respondent, the applicants ought to be first

⁵ [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC).

provided with the alternative accommodation before its suitability can be assessed. In the absence of such provision, there is no basis upon which to contend that the accommodation is or will be inadequate.

Conclusion on the Prospects of Success

- [32] Having considered the grounds of appeal advanced by the applicants, I am not persuaded that there is any reasonable prospect that another court would arrive at a different conclusion. The main judgment was based on straightforward application of legal principles to the facts, the antecedent proceedings had been finalised, the foundation for the interim interdict had fallen away, and the applicants failed to comply with the Rules of Court. Importantly, the order was crafted in a just and equitable manner, including the provision for alternative accommodation for the applicants.
- [33] There are no conflicting judgments on the matter that would necessitate the attention of a higher court, nor are there any other compelling reasons why an appeal should be entertained.
- [34] Another ground for leave to appeal was the failure to comply with the directive to file supplementary heads of arguments. This point was correctly argued by counsel of the respondent regarding the directives that I issued regarding the heads of arguments with the previous counsel in this matter. It is a fact that the directive that this court issued was not complied with and instead a letter was written by the attorneys of the applicants to abridge the time frames that were set by this court with regards to the heads of arguments. The Counsel for the respondent read the letters on record indicating a clear non-compliance by the applicants. Despite that non-compliance, the heads of arguments were read and considered by this court. Therefore, that ground is ill conceived and cannot stand as a proper ground of appeal.
- [35] Accordingly, the question posed earlier in this judgment – whether the applicants have satisfied the test for leave to appeal on the grounds advanced is answered in the negative. The applicants have thus failed to meet the requisite threshold.

Order

[36] In the premises, I make the following order:

1. The application for leave to appeal is dismissed, with costs in scale C; such costs include the costs of Counsel.

R.R NTHAMBELENI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Applicant: Adv L Modise
Instructed by: Mabuza Attorneys

For the Respondent: Mr S Magagula
Instructed by: Finger Attorneys

Date of Hearing: 16 March 2026
Date Delivered: 25 March 2026