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**IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION MAHIKENG**

CASE NO: M346/2020

Appeal Case No: CIV APP FB 19/2022

In the matter between:

RUSTENBURG LOCAL MUNICIPALITY

FIRST RESPONDENT

ASMAR RANTHEKENG KHIDUGE

SECOND RESPONDENT

And

LAYER 3 TELECOM (PTY) LTD

APPLICANT

Judgment is handed down electronically by distributing to the parties' legal representatives by e-mail. The date that the judgment deemed to be handed down is 26 March 2025 at 16H00.

ORDER

Consequently, the following order is made:

1. The application for leave to appeal is dismissed.
2. Applicants are ordered to pay the costs of the application.

JUDGMENT

MABUZA AJ

INTRODUCTION

[1] This is an application for leave to appeal against the judgment of this Court wherein the applicants were found to be in contempt of a court order by compelling the production of documents. The applicants contend that this Court erred in finding wilfulness and mala fides and that another court would reasonably arrive at a different conclusion.

[2] The respondent opposes the application and submits that no reasonable prospects of success have been established.

FACTUAL BACKGROUND

[3] The Full Court issued an order in April 2024 directing the applicants to produce specified documents within 10 days and furnish them to the respondent. The applicants failed to comply within the stipulated period. Between June and November 2024, the applicants conducted what they describe as a diligent search and produced documents incrementally. Certain documents remained outstanding, leading the respondent to institute contempt proceedings during December 2024.

APPLICANTS' CASE AND ARGUMENT

[4] The applicants submit that they undertook extensive efforts to locate the documents, including appointing interns and searching archives. They argue that the delayed production of documents demonstrates good faith and negates wilfulness and mala fides. They contend that this Court erred in failing to properly consider the diligent search conducted.

RESPONDENT'S CASE AND ARGUMENT

[5] The respondent submits that the applicants failed to comply with a peremptory court order within the prescribed time. It is argued that the applicants initially acknowledged the existence of the documents but later claimed they could not be found. They contend that the subsequent production of some documents indicates that documents were withheld.

[6] It is further submitted that the outstanding documents are material to intended review proceedings.

FACTORS NOT IN DISPUTE

[7] The following issues are not in dispute:

1. that the Full Court ordered production of documents within 10 days;
2. that applicants did not comply within that period;
3. that other documents were produced months later after Full Court order;
4. that there are still outstanding documents not provided to the respondents.

FACTORS IN DISPUTE

[8] The following issue is in dispute:

1. That the applicants acted wilfully and mala fide in not providing the document in terms of the Full Court order.

ISSUES FOR DETERMINATION

[9] The following factors must be determined by this Court.

1. Whether the applicants have demonstrated reasonable prospects of success on appeal.
2. Whether another court would reasonably reach a different conclusion.
3. The issue of costs.

LEGAL PRINCIPLES

[10] Section 17(1)(a) of the Superior Courts Act ¹provides that leave to appeal may only be granted where the appeal would have a reasonable prospect of success. In *MEC for Health, Eastern Cape v Mkhitha and Another*,² the Supreme Court of Appeal held that a mere possibility of success is insufficient.

¹ Superior Courts Act 10 of 2013.

² *MEC for Health, Eastern Cape v Mkhitha and Another* 2016 (ZASCA 176) para 17.

[11] In *S v Smith 2012*,³ the Court held that there must be a reasonable prospect that another court would reach a different conclusion. In *Ramakatsa and Others v African National Congress and Another*,⁴ it was held that a sound, rational basis must exist for prospects of success.

[12] The principles governing contempt were set out in *Fakie NO v CCII Systems*.⁵ These principles were confirmed in *Pheko and Others v Ekurhuleni Metropolitan Municipality*.⁶

[13] Costs follow the result unless exceptional circumstances exist.

ANALYSIS

[14] The applicants failed to comply with a court order within the stipulated period. The explanation of a diligent search does not justify non-compliance with a court order. The piecemeal production of documents supports an inference of wilfulness and mala fides. This Court dealt with what the applicants raised as their ground of appeal in its judgment and supported it with reasons. What the applicants argues is the mere reputation of what they argued during the application by the applicant for contempt. This Court will not in this application repeat what it has already dealt with in its judgment delivered on 30 October 2025.

FINDING

[15] The applicants have failed to demonstrate reasonable prospects of success. This Court finds that no other court would reach a different conclusion.

³ *S v Smith 2012* (1) SACR 567 (SCA) para 7.

⁴ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

⁵ *Fakie NO v CCII Systems (Pty) Ltd 2006* (4) SA 326 (SCA) para 42.

⁶ *Pheko and Others v Ekurhuleni Metropolitan Municipality* (No 2) 2015 (5) SA 600 (CC) paras 28–30.

COSTS

[16] There is no reason to depart from the general rule that costs follow the result.

ORDER

1. The application for leave to appeal is dismissed.
2. Applicants are ordered to pay the costs of the application.



B MABUZA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG

Heard on: 19 March 2026
Judgment delivered on: 26 March 2026

Appearances

Counsel for the Applicants : Adv N G Laubscher
Instructed by M E Tlou Attorneys & Associates Inc, Mafikeng

Counsel for the Respondent: Adv T Moretlwe
Instructed by Modiboa Attorneys, Mahikeng