



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

Case No. 2026 – 024042

In the matter between

**KEVIN WILLIAMS**

**CONCERNED BROTHERS OF KDG**

**FIRST APPLICANT**

**SECOND APPLICANT**

And

**SUPREME OFFICERS OF THE KNIGHTS  
OF DA GAMA**

**THE AWP BOARD OF MANAGEMENT**

**THE SOUTHERN AFRICAN CATHOLIC**

**BISHOPS CONFERENCE (SACBC)**

**THE SOUTH AFRICAN REVENUE  
SERVICES**

**THE DEPARTMENT OF SOCIAL  
DEVELOPMENT**

**FIRST RESPONDENT**

**SECOND RESPONDENT**

**THIRD RESPONDENT**

**FOURTH RESPONDENT**

**FIFTH RESPONDENT**

**Coram:** MAGONA-DANO AJ

**Hearing Date:** 30 March 2026

**Judgment delivered:** 10 April 2026 (electronically to the parties)

**Summary:** Leave to appeal – An order that came out of a point in *limine* raised -Appealability of the order an issue - Interests of justice considered - Order not appealable it was interlocutory and not final on the merits - There were no compelling reasons in the interests of justice shown either - No need to consider prospects of success on appeal.

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## **ORDER**

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In that regard I make the following order:

The application for leave to appeal is dismissed with costs

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## **JUDGMENT**

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**Magona-Dano AJ**

### **INTRODUCTION**

[1] This is an application for leave to appeal against the order of this Court handed down on 12 February 2026 (“the order”). The order struck the matter off the roll on the basis of a point in *limine* raised and an award of costs *de bonis propriis* against the First Applicant, Mr Williams who instituted these

proceedings after being declared a vexatious litigant. Reasons for the decision were requested and provided on 02 March 2026.

[2] The First and Second Respondents oppose the granting of leave to appeal.

[3] Mr Williams filed a leave to appeal application based on a plethora of grounds. However, on the day the matter was heard he confined his submissions to two points, contending that the remaining grounds flowed therefrom and expressly indicated that he was no longer proceeding with the rest.

[4] To him this court erred or misdirected itself in striking the matter off the roll on the following grounds:

- a. in finding that the condonation application which was mentioned in the supplementary affidavit was not proper; and
- b. imposing the costs order *de bonis propriis* against him.

[5] Ms Samkange for the First and Second Respondents argued against the application and ground now emphasised on. She firstly raised, once more, a point that she submits this court ought to consider which will ultimately have an impact that this application can only be dismissed. There was no appealable order before this Court.

### **ISSUES TO BE DETERMINED**

[6] Two main issues arise for determination.

- a. The first is whether the order is appealable.
- b. The second is whether an appeal would have reasonable prospects of success, where the order is appealable.

## **LEGAL POSITION**

### **Appealability**

[7] In *Zweni v Minister of Law and Order*<sup>1</sup> Harms AJA (as he then was) said the following:

‘In the light of these tests and in view of the fact that a ruling is the antithesis of a judgment or order, it appears to me that, generally speaking, a non-appealable decision (ruling) is a decision which is not final (because the Court of first instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.’

[8] This Court may only grant leave to appeal if the order sought to be appealed is a “decision” within the meaning of section 16(1)(a) of the Superior Courts Act 10 of 2013 (“Superior Courts Act”).<sup>2</sup>

[9] There is no difference between the meaning of the term “decision” in section 16(1)(a) of the Superior Courts Act and the phrase “judgment or order” in section 20 of repealed former Supreme Courts Act 19 of 1959.

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<sup>1</sup> (310/91) [1992] ZASCA 197; [1993] 1 All SA 365 (A); 1993 (1) SA 523 (A) (20 November 1992)

<sup>2</sup> Section 10 of the Superior Courts Act: “Subject to section 15(1), the Constitution and any other law- (a) an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted...”

[10] Section 10 of the Superior Courts Act:

‘Subject to section 15(1), the Constitution and any other law-

- (a) an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted...” same meaning has to be given to the ‘decision’ contemplated in s 16(1)(a) of the Superior Courts Act.” *Neotel (Pty) Ltd v Telkom SA Soc Ltd and Others*.’

[11] In *Neotel (Pty) Ltd v Telkom SA Soc Ltd and Others*<sup>3</sup>, Crippin AJA (as he then was) stated:

‘If a decision did not constitute a ‘judgment or order’ the decision was not appealable under the Supreme Court Act. Since there is no conceptual difference between such a judgment or order and the ‘decision’ contemplated in s 16(1)(a) of the Superior Courts Act, the same would hold true under the Superior Courts Act. The ‘judgment or order’ was held to refer to a substantive judgment or order in terms of which the court granted or refused the relief sought. The same meaning has to be given to the ‘decision’ contemplated in s 16(1)(a) of the Superior Courts Act.’

[12] *Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV Smart and Another*<sup>4</sup>, the Supreme Court of Appeal again emphasized the avoidance of piecemeal litigation and continued relevance of the *Zweni* triad. Koen AJA said:

‘If one of the attributes in *Zweni* is lacking, an order will probably not be appealable, unless there are circumstances which in the interests of justice, render it appealable.

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<sup>3</sup> (605/2016) [2017] ZASCA 47 (31 March 2017) para 13.

<sup>4</sup> (573/2023) [2024] ZASCA 129; [2025] 1 All SA 60 (SCA); 2025 (1) SA 392 (SCA) (1 October 2024) para 32.

The emphasis has moved from an enquiry focused on the nature of the order, to one more as to the nature and effect of the order, having regard to what is in the interests of justice.’

‘It is not in the interest of justice to have a piecemeal adjudication of litigation, with unnecessary delays resulting from appeals on issues which would not finally dispose of the litigation. As the Constitutional Court has held, albeit in a different context, it is undesirable to fragment a case by bringing appeals on individual aspects of the case prior to the proper resolution of the matter in the court of first instance, and an appellate court will only interfere in pending proceedings in the lower courts in cases of great rarity – where grave injustice threatens, and, intervention is necessary to attain justice.’<sup>5</sup>

### **Leave to appeal**

[13] Section 17(1)(a) of the Superior Courts Act<sup>6</sup> regulates applications for leave to appeal and it provides that:

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

[14] Recent case law shows that changing "might" to "would" in the test for leave to appeal has raised the standard. The Supreme Court of Appeal clarified this in *MEC for Health, Eastern Cape v Mkhitha*,<sup>7</sup> reminding us of the effects of section 17(1)(a)'s amendment.

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<sup>5</sup> *Minmetals* supra para 33

<sup>6</sup> Act 10 of 2013

<sup>7</sup> (1221/2015) [2016] ZASCA 176 (25 November 2016) paras 16-18

‘[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.;

[18] In this case the requirements of 17(1)(a) of the Superior Courts Act were simply not met....”

[15] A mere possibility that another Court might come to a different conclusion is not enough to convince the trial Court to grant leave to appeal. In this regard the Supreme Court of Appeal stated the following:

‘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.’<sup>8</sup>

[16] It is for this Court to, with an open and honest reflection on the facts and the law, reconsider the evidence and the appellant's argument in deciding whether to grant leave to appeal. In doing so, the appellant urged this Court to adopt a holistic approach in evaluating the evidence.

## **DISCUSSION AND ANALYSIS**

### **Appealability**

[17] I consider it appropriate to deal first with the point raised by Ms Samkange on behalf of the First and Second Respondents. She submitted that the order of this Court is not appealable because it constitutes a ruling only and does not have a final effect and neither disposed of the main issues in the application that was then before this court.

[18] Further, this court's decision to strike this matter from the roll came out of a point *in limine* raised by the First and Second Respondents in the main application and was therefore interlocutory in nature. The merits of the case were never dealt with but only the pending and procedural aspect he should have dealt with prior to the institution of the application, namely the consequence of the applicant having been declared a vexatious litigant.

[19] That the leave to appeal application failed to meet the requirements of the leading case and the starting point on appealability as described in *Zweni v Minister of Law and Order*<sup>9</sup>. In that judgment, the Appellate Division held that three requirements had to be met in order for a judgment or order to be "appealable":

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<sup>9</sup> Zweni supra

- a. the decision sought to be appealed must be final in effect. This means it must not be susceptible to alteration by the court appealed from;
- b. the decision must be definitive of the rights of the parties; and
- c. the decision must have the effect of disposing of at least a substantial portion of the relief claimed.

[20] That it is the principle as laid out in *Zweni* case regarding the appealability of Court's decisions which this Court should follow. Mr Williams should not be given an opportunity to abuse the leave to appeal process where there is no final decision that was ever made on the merits of the application.

[21] The court simply made a ruling and struck the matter off the roll; this therefore was not an appealable order because there would be no issues or merits before an appellate court to deal with.

[22] Further that Mr Williams turns and seem to seek sympathy from the court on behalf of individuals whose rights and issues in the main application were never dealt with before the court *a quo*. The submissions that were made and the ruling of this court speaks to the relevant vexatious litigant order and not the issue relating to merits and rights of individuals involved and such should not even be considered at this stage by this Court.

[23] Mr Williams argued that it would be in the interests of justice that this Court grant leave to appeal, irrespective of the nature of the judgment/order or decision of this Court.

[24] That the Applicants and all other beneficiaries stand to suffer if the decision that led to the matter being struck off with a punitive cost order stand. Further that alternatively the Court should make an order suspending its order pending the finalisation of the SCA Appeal where he currently has petitioned for leave to appeal the main order that was made against him before Kantor AJ declaring him a vexatious litigant.

[25] On questions asked by this Court regarding the Court's powers to interfere with its already pronounced order. Mr Williams stated that this Court can still revisit the order and simply suspend it, he was of the view therefore that the court is not *functus officio*.

[26] Mr Williams also argued that there is a significant legal issue concerning the online filing system versus physical court filing. The matter revolves around determining the official date of issuance for an application when delays occur within the online system. The SCA needs to address this question and clarify how the new online court filing system, including its technical delays, affects the process of issuing matters.

### **Analysis-appealability**

[27] In *Zweni* case the three requirements for the appealability of a decision sought to be appealed against are clear that such must be final in effect. This

means it must not be susceptible to alteration by the court appealed from; the decision must be definitive of the rights of the parties; and the decision must have the effect of disposing of at least a substantial portion of the relief claimed.

[28] Applying the Zweni factors *in casu* the order was interlocutory, was not final in effect, and was susceptible to alteration by this court. Mr Williams in a way submitted so, hence he could request that this Court suspend its own order, but I was not so convinced.

[29] As there is no final effect to the main issues before the parties, they remain pending and can still be heard by a Court of law if the rest of the parties were to pursue such issues, their rights to the main application were not determined yet.

[30] Further as this Court's order was interlocutory in nature, it necessarily flowed from the prior order declaring Mr Williams a vexatious litigant. In the absence of the requisite leave, the institution of further litigation thereafter constituted a nullity. This aspect was also addressed in the judgment.

[31] In *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd*<sup>10</sup>, the Supreme Court of Appeal confirmed that the *Zweni* triad remains relevant and has not been supplanted by the development of our jurisprudence.

[32] Mr Williams stated that he is currently requesting permission to appeal the vexatious litigant order to the SCA. This, in my opinion, is another reason why the interlocutory order issued by this court is not appealable, the order of

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<sup>10</sup> 2023 (5) SA 163 (SCA)

this court did not dispose of the litigation as it came about as a result of the vexatious litigant order and should he succeed at the SCA , in my view, the order of this court will automatically fall away.

[33] Lastly, even most recently as to whether the relief granted was final in nature, it was held by the Constitutional Court in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*<sup>11</sup>, that the form of the order and predominantly, its effect must be considered when deciding whether an order is appealable. An order which in form appears to be purely interlocutory may nonetheless be appealable if its effect is such that it is final and definitive of any issue or portion thereof in the main action.

[34] The order of this Court was not definitive of the issues arising in the main application nor did it limit the other Applicants to actually proceed with that application excluding Mr Williams as a co-litigant.

[35] In that regard I am of the view that the order/decision that leave to appeal is sought against is not appealable because it was an interlocutory order and the main issues must still be dealt with by the court *a quo*.

### **Interests of justice**

[36] I am addressing this point because Mr Williams also raised it in support of the leave to appeal application.

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<sup>11</sup> 2023 (1) SA 353 (CC) para 41

[37] It seems Mr Williams considered the option of the interests of justice as a ground based on its historical use on many cases before, even in matters of an interim nature. I deal with these below.

[38] Ms Samkange was of the view that the interests of justice principle did not apply herein she based her submissions on appealability argument above and that there was no constitutional issue that was before the Court since the merits were never dealt with. That the *Zweni* principles as a starting point apply and Mr Williams has failed to meet the standard set in that case.

### **Analysis-interests of justice**

[39] I am mindful that the Supreme Court of Appeal<sup>12</sup> appeared to have moved away from the test established in *Zweni* for a number of years before, where instead it adopted the constitutionally mandated “interests of justice” standard. The Court ruled that a decision could be appealable even if it did not satisfy the criteria set out in *Zweni*, provided that the interests of justice warranted an appeal.

[40] I understand that those cases<sup>13</sup> were decided in the context of the Supreme Court Act 59 of 1959, which has since been repealed by the Superior Courts Act 10 of 2013 now there are various reasons that such an approach cannot stand. Some of these include that:

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<sup>12</sup> See also: *S v Western Areas Ltd* 2005 5 SA 214 (SCA) para 28; *Philani-Ma-Afrika v Mailula* 2010 2 SA 573 (SCA) obiter para 20; *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 4 SA 618 (CC) para 53

<sup>13</sup> Footnote 11 above

a. Section 17(1) of the Superior Courts Act expressly defines necessary conditions for the granting of leave to appeal and it does not make the interests of justice the standard for appealability.

b. Further, Section 167(6) of the Constitution expressly makes the interests of justice the standard for appealability to the Constitutional Court, but not to any other court.

[41] The assumption in many cases was that the interests of justice, and not *Zweni*, defined the test for appealability thereafter.

[42] However, in *TWK Agriculture Holdings case*<sup>14</sup>, the Court held that:

‘[r]ecent decisions of [the Supreme Court of Appeal] which may have been tempted into the general orbit of the interests of justice should now be approached with the gravitational pull of *Zweni*’

[43] The Court also confirmed that the “interests of justice” standard has a specific constitutional provenance: section 167(6) of the Constitution, which governs appeals to, and only to, the Constitutional Court (at paras 25-26).

[44] In *casu* therefore I am of the view that there is no prevalent constitutional issue in relation to the order that would seek redress to the Constitutional Court.

[45] As was also held in *Minmetals*<sup>15</sup> case it is not in the interests of justice to have a piecemeal adjudication of litigation, with unnecessary delays resulting

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<sup>14</sup> [2023] ZASCA 63 para 30.

<sup>15</sup> *Minmetals* supra

from appeals on issues which would not finally dispose of the litigation. The merits of this matter have not been dealt with and if the other Applicants proceed with it and may have a finding which they wish to appeal also one day, that would have resulted in a piecemeal dealing of the matter if leave to appeal of the interlocutory order is granted. In any event, it can never make sense to send a point to the appellate court whose merits were never dealt with, no issues dealt with.

[46] In this context, I was not persuaded that an appealable order was before me even on the ground of interests of justice; consequently, it is unnecessary to address the prospects of success as though such a possibility existed after an open and honest reflection on the facts and the law.

[47] Accordingly, I am of the opinion that the application should be dismissed.

## **COSTS**

[48] I have considered the strong argument by Ms Samkange for a punitive costs order once more, I was not persuaded this time.

[49] Since Mr Williams took what he believed to be the right course of action in this matter at this point—seeking leave to appeal—the party and party costs will be sufficient in this Court's discretion. At the very least, he did apply for leave rather than pursuing an application without it as he had previously done.

[50] In the discretion of this Court, I find that there is no need to punish him therefore for exercising his right at attempting an appeal.

## **CONCLUSION**

[51] In that regard I make the following order:

The application for leave to appeal is dismissed with costs.

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**P MAGONA-DANO**  
**ACTING JUDGE OF THE HIGH COURT**

### Appearances

For Applicant: Mr Kevin Williams

Instructed by: In person

### For First and Second

Respondents: Adv Gugulethu Samkange

Instructed by: Thomson Wilks Inc.