



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: **37766/2020**

REPORTABLE: No

OF INTEREST TO OTHER JUDGES: No

REVISED:

DATE 13 March 2026

SIGNATURE

In the matter between

MXOLISI ZONDO

(Identity Number: 7[...])

First Applicant

THANDEKA BRIDGETTE ZONDO

(Identity Number: 8[...])

Second Applicant

and

SB GUARANTEE COMPANY (RF) (PTY) LTD

(Registration Number: 2006/0216576/07)

Respondent

These reasons are prepared and authored by the Judge whose name is reflected

as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for handing down is deemed to be 13 March 2026.

LEAVE TO APPEAL

RETIEF J

INTRODUCTION

[1] Procedurally this is a fascinating matter and the reasons for making that statement and, how it relates to the outcome of this application for leave to appeal will become apparent. This Court dealt with the application for leave on the papers and after concise heads of argument were called for and filed.

[2] To commence, on the 25 June 2025 this Court handed down clarified reasons. The reasons for such clarification is dealt with in paragraph [9] of the reasons to which deference is given. In the preceding paragraphs, in particular, from paragraph [5] onwards, this Court dealt with the purpose rule 49(1)(c) after it was notified that the Applicants filed a notice requesting reasons. The Applicants' request was found to be misplaced triggering reasons to clarify. It is to be restated that the Applicants after serving the request for reasons filed and an application for leave to appeal [initial leave to appeal].

[3] Notwithstanding, the reasons which, *inter alia*, gave a concise explanation of the importance complying with Court directives did not seem to fall on fertile ground in that the Applicants thereafter still did not comply with the directives of this Court concerning appeals. They, yet again, simply uploaded an amended application for leave dated the 28 August 2025. This Court again unaware it had occurred.

[4] In fact it took the Applicants attorney record 5 (five) months after the amended leave to appeal was uploaded to file a compliance statement as per the directives. In consequence yet again, further delay as my office only received

confirmation of the amended leave to appeal from the appeals Registrar on the 23 January 2026.

[5] As a result of the same procedural modus used by the Applicants, notwithstanding being forewarned that such modus constitutes non-compliance of the directives, the Applicants forged ahead. It therefore came as no surprise that the Respondents raised certain preliminary issues. These reasons will be dealt with before considering the merits of the leave to appeal, if applicable.

PRELIMINARY ISSUES

[6] Most of the preliminary complaints arise as a result of the procedural steps taken by the Applicants, certain of which the Respondents argue render the initial and amended leave to appeal defective. The Applicants' Counsel did not venture to deal with any procedural issues nor were supplementary heads of argument filed to deal with the preliminary issues raised in written argument.

[7] To explain, the Applicants, after the judgment was handed down and reasons given in the record at the date of the hearing, the 24 August 2024, filed the initial leave to appeal 150 days after the order. The Applicants in the initial leave application requested condonation on the basis that the initial application was merely filed to stay a writ of execution and that, in so far necessary, they seek condonation as they await a response to the reason request. The initial leave application was simply uploaded and they, as of right, indicated that they reserve the right to supplement their initial leave application.

[8] This Court in paragraphs [3]-[9] of the reasons dealt with why the reason request was misplaced. This being a clear message that leave, as referred to in rule 49(1)(b) to extended the 15 (fifteen) day pre-emptory timeline, applied and that any assumed right to proceed and to amend simply did not follow. The Applicants having received the reasons and being aware of the basis upon which they were provided by this Court none the less as of right filed an amended notice. No leave based on good cause was sought or set out and as stated, the amended leave application was uploaded absent compliance of the directives.

[9] This is the reason why the Respondents referred to the amended leave application as the “purported amended notice” and why they still persisted with the argument that the Applicants needed to seek condonation. Failure to do so they argued, meant that this application should be non-suited.

[10] Furthermore, the Respondents also raised the point that the amended leave application was not signed by the Applicants nor by their attorney of record but, pointed out that it was signed by Adv Peter William Makhambeni. Adv Peter William Makhambeni cited himself as “*Counsel for the Applicants.*” Other than his name, no further particulars were given to the Respondents. No physical address, no contact number nor an email address for communication nor service purposes was provided.

[11] The Respondent’s confusion was amplified by the fact that it was SS Msondo attorneys who came on record when the Applicants entered an appearance to defend has not withdrawn by notice. This too, must be considered against the procedural fact that the First Applicant, in person, filed concise heads of argument dealing with the summary judgment application and rule 49 declarator relief, he also drafted and signed both rule 49 request for reasons and signed the initial leave application.

[12] Having regard to all the papers filed, having regard to the statement compliance uploaded by Molteno Sibusiso attorneys and coming on record, it is understandable that the Respondents were unsure why Adv Peter William Makhambeni signed the amended leave application. Furthermore, that if he was a referral advocate then the amended leave application had not been signed by the Applicants nor by their attorneys of record and, as such defective. No amended leave application before Court.

[13] The argument raised by the Respondent that a defective amended leave application comes into focus. The focus is compounded by the fact that Adv Peter William Makhambeni failed to inform this Court, as did the First Applicant in the initial leave to appeal, which Court the Applicants seek leave to appeal to. Whether the Full Court of this Division or to the Supreme Court of Appeal [SCA]. The Applicants Counsel’s heads of argument is silent.

[14] Over and above the lack of condonation argument, the defective argument regarding the amended leave application, the Respondent argues that the formulation of the grounds raised in the amended notice fail to comply with uniform rule 49(1)(b) in that the Applicants attack the reasons rather than succinctly in unambiguous terms so as to enable the Court and the Respondent to be properly informed of the case the Applicants seek to make out. This argument however, is not as compelling and the others in that from a reading of the initial leave application with the amended leave application, the nub of complaints raised remained constant no matter how they were redraft by Adv Peter William Makhambeni.

[15] This Applicants' Counsel in written argument who was not Morris SC nor Adv Peter William Makhambeni distilled it as being the manner in which the Court exercised its discretion regarding the refusal of a postponement and, declaring the immovable property executable in light of the facts that were before it and the importance of the right to housing in our Constitutional democracy. This too can be distilled from the initial leave application too.

[16] Considering the arguments and all the procedural steps taken by the Applicants culminated with their failure to disturb this Court's interpretation of rule 49(1)(c) nor to adhere to it, the Applicants failed to show good cause why the time periods referred to in rule 49(1)(b) do not apply alternatively, that if it did apply as reasoned, why they should be extended having regard to all the circumstances which transpired. In the premises, the application for leave to appeal based on the initial and the amended leave must fail.

[17] Furthermore this Court finds that the amended leave application is defective as argued having regard to all the papers filed and as such, it cannot stand. No leave based on the amended application for leave is properly brought before this Court. The necessity to deal with the grounds of the appeal as raised in the initial leave application not triggered for lack of compliance.

[18] However, even if this Court is wrong, considering the nub of the grounds as raised by the Applicants Counsel, this Court after reconsidering the typed record and its clarification reasons is satisfied that it exercised its discretion judicially.

This Court considered all the evidence filled by both parties, it heard the submissions made by Counsel for both parties, it considered the pleadings and the filed heads of argument, it stood the matter down after refusing the postponement to allow the Applicants to attend Court to make further submissions. The Applicants elected not to attend.

[19] This Court reaffirms that the postponement before it was not the first brought on similar grounds, and that a postponement is an indulgence which is sought and is not automatically granted nor is it of right. Therefore if refused, as it was the merits of the application would be traversed. A litigant cannot craft a postponement by only appointing Counsel to argue a postponement and then bemoan it was not heard simply because if elected not to attend Court when it was called to attend and to make submissions on the merits (judgment and rule 49A declarator) to be adjudicated.

[20] Considering all that arguments preliminary and otherwise, this Court is of the opinion that the appeal will not have a reasonable prospect of success and that the Applicants have failed to meet the threshold of section 17 (1) of the Superior Courts Act 10 of 2013.

[21] There is no reason why the costs should not follow the result.

[22] The application for leave to appeal must fail.

The following order:

1. The application for leave to appeal is refused.
2. The First and Second Applicants are jointly and severally liable for the Respondents costs, Counsels fees taxed on scale B.

L.A RETIEF

Judge of the High Court

Gauteng Division

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Knowledge of date for application for leave to appeal: 23 January 2026
Date Heads of Argument were delivered: 05 March 2026
Date Judgment is delivered: 13 March 2026

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