



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2025-216771

In the matter between:

ABLON CONSTRUCTION CC

APPLICANT

[Registration No. 1996/020922/23]

and

MONESA PROJECTS (PTY) LTD

FIRST RESPONDENT

[Registration No. 2025/560708/07]

IN RE:

MONESA PROJECTS (PTY) LTD

APPLICANT

[Registration No. 2025/560708/07]

and

ABLON CONSTRUCTION CC

FIRST RESPONDENT

[Registration No. 1996/020922/23]

JUWI CONSTRUCTION ZA

SECOND RESPONDENT

[Registration No. 2023/976064/07]

Neutral citation: *Ablon Construction CC v Monesa Projects (Pty) Ltd; Monesa Projects (Pty) Ltd v Ablon Construction CC and Another* (2025-216771) [2026] ZAFSHC 115 (23 March 2026)

Coram: VAN ZYL J

Heard: Disposed of without oral argument in terms of s 19(a) of the Superior Courts Act 10 of 2013.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 14h15 on 23 March 2025.

Summary: Leave to appeal – grounds for granting leave – findings of urgency – breach of contract and ordering specific performance – leave granted.

ORDER

1 Leave to appeal is granted to the applicant (Ablon Construction CC) to appeal to the Full Court of this Division against the whole of the judgment and order issued under the abovementioned case number on 19 January 2026.

2 The costs of the application for leave to appeal are costs in the appeal.

JUDGMENT

Van Zyl J

[1] This is an application for leave to appeal against the order I made and the judgment I delivered in an urgent application in which the applicant was the first respondent and the first respondent was the applicant.

[2] In addition to the condonation I granted for the application to be heard on an urgent basis, I made the following substantive order:

'2. The first respondent's purported termination of the subcontract agreement on 16 October 2025 is declared invalid.

3. The first respondent shall comply with its obligations under and in terms of the subcontract agreement.

4. The first respondent shall do all things necessary to allow the applicant to comply with its obligations under and in terms of the subcontract agreement including:

4.1 notifying all on-site security personnel to reinstate the applicant's access and possession of the premises; and

4.2 preventing any of the first respondent's agents from impeding the applicant's undisturbed access to, use and possession of the premises; and

4.3 preventing any of the first respondent's employees, agents or representatives from preventing the applicant from continuing the subcontract works in terms of the subcontract agreement.

5. The costs of the application are to be paid by the first respondent, including the costs of counsel on scale C.'

[3] I will henceforth refer to the parties as cited in the present application.

Legal principles *re* leave to appeal:

[4] Section 17(1)(a) of the Superior Courts Act 10 of 2013 ('the Act'), determines as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a)(i) the appeal *would* have a reasonable prospect of success; or

(ii) if there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration . . . ' (My emphasis.)

[5] In *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHZ 489 (24 June 2016) para 25, the court held that the Act has raised the bar for granting leave to appeal and in this regard it referred to the judgment of *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others* 2014 JDR 2325 (LCC), where the following was stated:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court *might* come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.' (My emphasis.)

See also *Rohde v S* [2019] ZASCA 193; 2020 (1) SACR 329 (SCA) para 8 and *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another* (21688/2020) [2020] ZAGPPHC 311 (24 July 2020) para 4.

[6] In *Municipality of Thabazimbi v Badenhorst* (66933/2011) [2024] ZAGPPHC 195 (26 February 2024) paras 9–10, the court also dealt with the more stringent test for an application for leave to appeal and held, *inter alia*, as follows:

'[9] . . . A possibility and discretion were therefore, in the words of the legislation and consciously so, amended to a mandatory obligatory requirement that leave may not be granted if there is no reasonable prospect that the appeal will succeed. It must be a reasonable prospect of success; not that another Court may hold another view.

[10] The Court *a quo* may not allow for one party to be unnecessarily put through the trauma and costs and delay of an appeal . . . '

Notice of application for leave to appeal:

[7] The applicant's notice of application for leave to appeal sets out the grounds upon which the application is based in considerate detail. I do not intend to repeat same herein and will only refer to the crux of the respective grounds:

(a) The court erred in enrolling the matter as an urgent application. It failed to apply the requirement of whether the first respondent had shown that the absence of hearing the application on the expedited time period and basis as it had advanced its case, would have deprived it of adequate redress in due course.

(b) The first respondent delayed unnecessarily in the launching of the application. In this regard the court erred in discarding the applicant's evidence as to the purpose of the discussions held between the parties after the removal from the roll of the spoliation proceedings and before the urgent application was launched.

(c) The court erred in finding that the first respondent had not breached the terms of the subcontract agreement. In this regard the court erred in its interpretation of clause 6.3.1 of the subcontract agreement.

(d) The court erred in exercising its discretion in favour of ordering specific performance, especially considering that the trust relationship between the parties had already broken down.

(e) The court erred in not considering the fact that the subcontract had to be completed by 30 March 2026. In this regard the court failed to consider that by ordering specific performance, there was insufficient time for such performance to materialise. The court further erred in not having regard to the question whether the first respondent would be able and capable of performing the work considering that the applicant took over many of the employees of the first respondent.

[8] I have duly considered the aforesaid grounds of the application for leave to appeal, also in conjunction with the oral arguments which were presented to me on behalf of the parties during the hearing of the urgent application.

[9] When so considered I conclude that there is a reasonable prospect that another court would come to a different conclusion and that leave to appeal should therefore be granted.

Costs:

[10] There is no reason why the usual order pertaining to the costs of an application for leave to appeal should not be issued in the present matter.

Order:

[11] The following order is made:

- 1 Leave to appeal is granted to the applicant (Ablon Construction CC) to appeal to the Full Court of this Division against the whole of the judgment and order issued under the abovementioned case number on 19 January 2026.
- 2 The costs of the application for leave to appeal are costs in the appeal.


C. VAN ZYL
JUDGE OF THE HIGH COURT

Heads of argument:

For the applicant:

S Grobler SC

Instructed by:

Kramer Weihmann Inc., Bloemfontein

For the first respondent:

S Martin

Instructed by:

Symington & de Kok Attorneys, Bloemfontein.