

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2025-046666

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>06/03/2026</u> 	
DATE	SIGNATURE

In the matter between:

ABSALOM MOLEFE

Applicant

and

NATIONAL COUNCIL FOR CORRECTIONAL SERVICE

First Respondent

THE MINISTER OF CORRECTIONAL SERVICE

Second Respondent

This judgment is 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 CaseLines. The date for handing down is deemed to be 6 March 2026

JUDGMENT

SKIBI AJ

[1] Mr Absolom Molefe, the applicant, seeks leave to appeal against the order granted on 7 November 2025, by which the matter was removed from the unopposed motion court roll with costs.

[2] The legal principles for leave to appeal are contained in section 17(1) of the Superior Courts Act.¹ The section, among others, reads 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) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration ...”

[3] There are several judgments dealing with the test for leave to appeal encapsulated in section 17(1) of the Superior Courts Act. In *Democratic Alliance v President of the Republic of South Africa and Others*,² a full court judgment of this Division considered the threshold for leave to appeal and held as follows:

“The test as now set out in section 17 constitutes a more formidable threshold over which an applicant must engage than was the case. Previously the test was whether there was a reasonable prospect that another court might come to a different conclusion . . . The fact that the Superior Courts Act now employs the word “would” as opposed to “might” serves to emphasise this point. As the Supreme Court of Appeal said in *Smith v S* 2012 (1) SACR 567 (SCA) at para 7;

‘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.’

[5] ...

[6] The second basis upon which leave should be granted is that there is a compelling reason, that is apart from the existence of conflicting judgments on the matter under consideration which

¹ Act 10 of 2013.

² *Democratic Alliance v President of the Republic of South Africa and Others* [2020] ZAGPPHC 326.

require clarification from a higher court. In essence the compelling reason is whether the case raises issues of significant public importance.” (Emphasis in original.)

[4] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha*,³ remarked as follows:

“[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.” (Emphasis in original and footnotes omitted.)

See also *Mont Chevaux Trust v Goosen and Others*,⁴ and *Notshokovu v S*.⁵

Background

[5] Mr Molefe has been incarcerated since 1997 and is serving his sentence at Groenpunt Correctional Centre under the authority of the Department of Correctional Services. In 2024, he applied for placement on parole after reaching his parole consideration date.

³ [2016] ZASCA 176.

⁴ Unreported judgment of the Land Claims Court, Case No LCC14R/2014 (3 November 2014) at para 6.

⁵ [2016] ZASCA 112 at para 2.

[6] On or about 19 January 2025 and 28 January 2025, the Minister of Correctional Services, MP Dr Groenewald (hereinafter referred to as the “Minister”), took an administrative decision, i.e. disapprove the applicant’s parole application. On 4 April 2025, the applicant aggrieved by the Minister’s decision decided to launch an application to this Court seeking an order to review and set aside the impugned decision taken by the Minister. On 5 May 2025, the respondents filed a notice to oppose the application. On 20 May 2025, the applicant filed a rule 30A notice calling on the respondents to comply with rule 53(1)(b) of the Uniform Rules of Court. On 6 June 2025, the respondents dispatched the records. On the morning of 9 June 2025, the respondents served and filed the written reasons.

[7] According to the respondents, in the afternoon of 9 June 2025, they were served with a notice of motion to compel them to provide the record and written reasons. The respondents attorneys, taken aback by this move, engaged the applicant’s attorneys, stating that they already served the record and reasons. It is alleged that the response which was received was that the applicant’s attorneys cited they wanted the reasons as stated in *Phaahla v National Council for Correctional Service and Others*.⁶ The respondents alleged that they do not have the power to change the reasons, as only the Minister has such authority. Despite the applicant’s attorneys not being satisfied with the reasons provided to them by the respondents, on 18 June 2025, the applicant served the respondents with a supplementary founding affidavit. The applicant alleges that on 30 June 2025, the period of 30 days had expired. Thereafter, the applicant went ahead to set down the rule 53(1)(b) of the Uniform Rules of Court application for hearing on 26 August 2025.

[8] The respondents served and filed their answering affidavit to the rule 53(1)(b) application, which was followed by an application for condonation for the late serving and filing of the answering affidavit in the rule 53(1)(b) application and the main review application.

⁶ [2025] ZAGPPHC 1061.

[9] On 26 August 2025, the application to compel was placed before Tolmay J, whereby an order was granted to remove the matter from the roll, costs reserved. The respondents allege that the matter (interlocutory application- application to compel) was removed from the roll so that it should be placed on the opposed motion court roll. The applicant seems to dispute that the matter (the application to compel) was removed from the unopposed motion court roll.

[10] On 11 September 2025, the applicant proceeded to apply for a court date to place the review application on the unopposed motion court roll. The matter was set down for hearing in an unopposed motion court on 7 November 2025 despite the applicant's claim that the rule 53(1)(b) record had not been furnished. The respondent's attorneys engaged the applicant's attorneys to remove 'the cause of complaint' in terms of rule 30 of the Uniform Rules of Court. However, the applicant persisted with the view that they have a right to enrol the review application irrespective of the pending application in terms of rule 53(1)(b) of the Uniform Rules of Court and an application filed in terms of rule 30 of the Uniform Rules of Court. The respondents filed their own rule 30 notice, in that the applicant had taken an irregular step once there was no response or removal of the cause of complaint.

[11] The respondents' legal representative argued that even though they warned the applicant's legal representatives to either withdraw the application in terms of rule 41(1) of the Uniform Rules of Court or remove and place it on the opposed motion court roll, they failed to do so. The applicant's legal representatives were of the view that the matter was correctly enrolled on an unopposed motion court roll due to the fact that the respondents failed to file their answering affidavit from May to November 2025.⁷

⁷ See *Essa v Judicial Commission of inquiry into state capture and Another* ZAGPJHC 1314 at paras 1-3 where the court first dealt with the interrelated interlocutory application before dealing with the main review application.

[12] From the said background, I now turn to the grounds of appeal. The applicant's legal representatives listed various grounds of appeal upon which they contend that the threshold as set out in section 17(1) of the Superior Court Act 10 of 2013 and the cases cited above have been met.

Misapplication of rule 6(5)(d)(ii) of the Uniform Rules of Court

[13] It was submitted on behalf of the applicant that the review application was issued on 16 April 2025, the respondents filed a notice of intention to oppose on 23 April 2025, and no answering affidavit was filed until the matter was heard on 7 November 2025. This is a lapse of a period of about 6 months. It was argued further that even on the date of the hearing, the respondents never sought an indulgence from the court to be given a stipulated time to file their answering affidavit. The applicant's legal team rely to the provisions of rule 6(5)(d)(ii), where, amongst other things, it states that an answering affidavit should be filed within 15 days of notifying the applicant of his intention to oppose the application. In essence, it was argued that the court erred in law and/or fact to conclude that the matter is opposed when no answering affidavit was filed for a prolonged extended time of period, i.e., about 6 months.

[14] It is common cause that at least about four interlocutory applications were pending when the applicant insisted in his argument on 7 November 2025 that the matter is unopposed. The applicant's rule 53(1)(b) application, read with the rule 30 notice, the respondent's counter application to stay the review application and the application for condonation for late filing of the answering affidavit in the rule 53(1)(b) application were pending. These applications are interlinked with the main application, i.e., the review application. These are substantive applications, not simple points in *limine* that can be raised in the answering affidavit. I agree with the respondents' legal team in their argument that they could not have taken further steps, as it invoked rule 30 application so as to alert the applicant about the irregular step he took by setting

down the review application prematurely, while the interlocutory application rule 53 is still pending.

[15] A holistic approach should be considered in this matter. The background shows that the review application was enrolled prematurely whilst there were pending interlocutory applications which had to be dealt with first, or action taken either to withdraw, discontinue, or abandon in terms of rule 41(1) of the Uniform Rules of Court. The respondent did not sit and do nothing in the six months as contended. The respondents served and filed a notice to oppose and shortly thereafter served and filed the record in terms of rule 53(1)(b). The applicant's legal team filed an application to compel before sunset of the date when they received the reasons. The respondents filed their answering papers opposing the application to compel. The respondents filed a counter-application to stay the review application and an application for condonation for the late filing of the answering affidavit in the rule 53 application and the main application. The applicant's legal team was aware that all the said interlocutory applications were still pending when they decided to enrol the review application in an unopposed motion court. The applicant's legal team did not follow the Rules of Court, they relied on by failing to first do something simple, i.e., file a notice to withdraw or abandon the interlocutory application in terms of rule 41(1) of the Uniform Rules of Court or dispose of the said rule 53 application before they enrolled the main application (review application).

The existence of an answering affidavit

[16] This ground only came to the fore in the supplementary notice for leave to appeal. It has been argued on behalf of the applicant that I erred in concluding that the matter is opposed based on an incorrect fact, i.e., that the respondents filed an answering affidavit in the review application. It was argued that the correct position is that the respondents filed an answering affidavit in an application to compel, not in the review proceedings. Yes, there was an error in stating that the respondent filed an answering affidavit in the review application when, in actual fact, that was the respondents' answering affidavit in the application to compel. In my view, this is not

an error of a material nature which could be characterised as a compelling reason for leave to appeal to be granted. This does not take away from the fact that the application for review was prematurely enrolled whilst the interlocutory applications were pending. The respondents notice of opposition was never withdrawn or amended or replaced by a notice to abide. I agree with the legal team for the respondents that the applicant should have addressed this by bringing it to the attention of the court rather than using this as a ground of appeal.

Entitlement to set down the matter

[17] The applicant's legal representatives submitted that they were entitled to set down the matter as they are empowered by the provisions of rule 6(5)(f)(i) which provides amongst other things that "*where no answering affidavit is delivered within the time referred to in subparagraph (ii) of paragraph (d), the application may, within five days after the expiry of that time, set the matter down for hearing on notice to the respondent.*" They further argued that this provision is peremptory, it does not require the withdrawal of the notice to oppose, a court directive, a separate application, or leave of court. Therefore, the applicant was entitled in terms of rule 6(5)(f)(i) to set the matter down on an unopposed motion court roll after expiry of the *dies* as it happens in other civil proceedings.

[18] My view is that this ground is unsustainable based on the reasons stated in paragraph 15 above.

[19] The applicant was not supposed to simply invoke the provisions of rule 6(5) as he (through his legal representatives) was aware that there were pending interlocutory applications which are directly linked to the review application. The argument that there is no directive or that he did not have to institute a separate application or seek leave of court has no merit. Logic dictates that he ought to have either filed a notice of withdrawal of the rule 53 application or set it down for hearing before he enrolled the

review application. The concession by the applicant's legal team on 7 November 2025 that the applicant is in receipt of the reasons and now satisfied with the said reasons took the respondent's legal team by surprise, as they were not aware of such before 7 November 2025.

Misinterpretation of rule 53(5)(b)

[20] The applicant's reliance on rule 53 (5)(b), which reads: "(5) *Should the presiding officer, chairperson or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, such presiding officer, chairperson or officer, as the case may be, or such party shall- ... (b) within 30 days after the expiry of the time referred to in sub-rule (4) hereof, deliver any affidavits such presiding officer, chairperson or officer, as the case may be, or such party may desire in answer to the allegations made by the applicant.*"

[21] The applicant contended that the respondents failed to file an answering affidavit in the review application, and the court made a glaring mistake in regarding the review application as opposed when it was heard on 7 November 2025. It was further contended that such an error is fatal and renders rule 53(5)(b) ineffective and undermines the structured procedure governing the review applications.

[22] In my view, this ground goes hand in hand with the argument already dealt with in respect of the first ground and the background above, and there was nothing wrong in granting an order that the matter be removed from the unopposed motion court roll and enrolled on the opposed motion court roll, where issues should be ventilated. It is undisputed that the applicant served the respondents with a rule 53 application in the afternoon of 9 June 2025, the very same day upon which the applicant was served with the written reasons.

[23] According to the respondents, there was no time to take further steps, i.e., to invoke a rule 30 application to alert the applicant about the irregular step taken. The applicant took an irregular step to set down the review application without first placing the interlocutory applications on the opposed motion court roll. Rule 30(4) provides that until the party against whom the order was made has complied with it, he/she may not take further steps in the main action.⁸ The respondents argued correctly, in my view, that they found themselves restrained to file an answering affidavit due to the facts alleged in rule 53 and rule 30 could not be raised in an answering affidavit as they are separate applications which had to be raised in their own right and they require complete set of affidavits and notice of motion from those in the main application. The response by counsel for the applicant was that the respondents could have factored it in an answering affidavit, but that has no merit.

Interlocutory applications do not suspend dies

[24] It was submitted that the written reasons suggest that the pending interlocutory applications justify the removal of the matter from the unopposed roll. The applicants contend that this amounts to a misdirection, and it is one of the grounds for leave to appeal. It was further contended that there is no court order staying proceedings that suspends the *dies*.

[25] The submission by the applicant is inaccurate. Nowhere in the written reasons does the court state that there is an order suspending the *dies*. The point was made that a pending application to stay the review application was filed, and there are interlocutory applications that are pending. The applicant prematurely enrolled the main review application when his legal team was well aware of the pending interlocutory applications. This is not a question of suspending *dies*, but logic dictates that. This point has been dealt with exhaustively under the other grounds above.

⁸ *Kopari v Moeti* 1993 (4) SA 184 (BGD) 188H.

Misinterpretation of Tolmay J Order

[26] The applicant contended that the court misinterpreted Tolmay J's order granted on 26 August 2025, wherein it was ordered that the matter be removed from the roll, costs reserved. The main contention on this ground was that the said order (by Tolmay J) does not state that the matter should be re-enrolled on an opposed motion court roll. The other point taken on this is that what was before Tolmay J was not a review application but the application to compel. Yes, the order by Tolmay J does not state that the matter should be removed and re-enrolled on the opposed motion court roll. However, the applicant never disputed this on 7 November 2025 before a ruling was made, i.e. interlocutory application was removed from the roll so that it may be enrolled in the opposed motion court. It is common cause that the interlocutory application, which was before Tolmay J, was neither finalised nor withdrawn. The applicant is correct that the matter which was before Tolmay J was not a review application but a rule 53 application. Be that as it may, this does not take away from the fact that the review application was prematurely enrolled without the withdrawal of the rule 53 application, read with the rule 30 Notice.

Costs order

[27] Although on 7 November 2025, I was of the view that a costs order against the applicant was justified, as I believed the applicant had abused the legal process by ignoring Tolmay J's order to first deal with the interlocutory applications, I reconsidered⁹ this view shortly thereafter in light of subsequent developments. It

⁹ The reasons for this are stated in the written reasons. In addition thereto the case of *Firestone South Africa (Pty) Ltd v Genticuro A.G* 1977 (4) SA 298 AD at 307 C-G laid down the following exceptions to the well-established principle in our law that once a court has duly pronounced a final judgment or order, itself has no authority to correct, alter or supplement it: "(i) *The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt, which the court overlooked or inadvertently omitted to grant.* (ii) *The court may clarify its judgment or order, if, on proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter "the sense and substance" of the judgment or order..*(iii) *The court may correct a clerical, arithmetical or others error in its judgment or order so as to give effect to its true intention ...* (iv) *Where counsel has argued the merits and not costs of a case (which nowadays often happens since the question of costs may depend upon the ultimate decision on the merits) but the Court, in granting judgment, also makes an order concerning the costs, it may thereafter correct, alter or supplements that order (see Estate Garlick v Commissioner of Inland Revenue, 1934 AD 499 at 502). The reason is (see 503-5) that in such a case the Court is always regarded as having made its original order "with the implied understanding" that it is open to the mulcted party (or perhaps*

would, however, not appear that Tolmay J directed that the interlocutory application should be dealt with first. The matter was merely removed from the roll, costs reserved. According to the undisputed contention of the respondents, the matter was to be set down on the opposed motion court roll if it was not settled/withdrawn. The applicant's legal team contended that I erred in granting a costs order against their client when they were not in default or did not breach the rules of the court in the exchange of the pleadings, i.e., filing of court papers. It was argued that I erred in exercising my discretion by granting a costs order against the applicant. Counsel for the respondents argued correctly that the issue of costs is within the discretion of the court. It was argued on behalf of the respondents that they have no issue even on the reconsidered order which effectively means that costs are yet to be determined when the main application is argued. The ancillary order of reserving costs is granted more often in motion court proceedings where the main issue is yet to be determined. I am of the view that granting leave to appeal either to the full bench or Supreme Court of Appeal will cause delay in resolving the main issues on review i.e. whether the decision of the respondents to refuse to place the applicant on parole is reviewable and/or should be set aside.

[28] The Supreme Court Appeal has warned against granting leave to appeal in instances where not all the issues are yet to be determined by the court of first instance, i.e. in this case the merits in the main application. Lewis JA in *Health Professions Council of South Africa v Professional Board for Emergency Medical Supplies and Training CC t/a EMS*¹⁰ remarked as follows: "A court, when requested to grant leave to appeal against orders or judgments made during the course of proceedings, should be careful not to grant leave where the issue is one that will be dealt with in isolation, and where the balance of the issues in the matter have yet to be determined. Of course, where a litigant may suffer prejudice or even injustice if an order or judgment is left to stand – as would have been the case in *King* – then the position will be different"¹¹. In the instant case no finding was made on the merits of the main application. The order is not final nor definitive of rights of the parties. It also

any party) "aggrieved" by the order -see p 505) to be subsequently heard on the appropriate order as to costs." (underlined own emphasis).

¹⁰ 2010(6) SA 469 (SCA) at para 25

¹¹ *Health Professions Council of South Africa v Professional Board for Emergency Medical Supplies and Training CC t/a EMS* at para 25

does not have the effect of disposing of at least substantial portion of the relief claimed in the main proceedings (review application); See also *Government of the Republic of South Africa and Others v Von Abo*¹²

[29] In *Von Abo* case, the SCA remarked as follows “*It is fair to say there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the right of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice.*”¹³ (My own underlining) See also *United Democratic Movement & Another v Lebashe*¹⁴

Compelling reasons

[30] It was argued that there are compelling reasons for the court to grant leave to appeal, i.e., whether interlocutory steps suspend *dies*, and whether a bare notice suspends the opposition indefinitely. It was further contended that procedural certainty in review proceedings is fundamental to the administration of justice. Furthermore, it was submitted that the minimum threshold of section 17 is met and leave to appeal should be granted.

[31] The applicant in the instant matter wants to deal with this matter in piecemeal, by seeking leave to appeal against an order that the matter ought to have been set down in an opposed motion court roll which does not deal with substantial issues of the review application. This is discouraged and the appellate court has held that piecemeal appeals are undesirable and are costly. In *Guardian National Insurance Co Ltd v Searle* NO¹⁵ Howie JA said that “the ‘*piecemeal appellate disposal of the issues in litigation*’ was not only expensive, but that generally all issues in a matter

¹² 2011 (5) SA 262 at para [17]

¹³ *Government of the Republic of South Africa v Von Abo* [2011] ZASCA 65; 2011(5) SA 265 at para 17

¹⁴ 2023(1) SA 353(CC) at para s [34] and [45]

¹⁵ 1999 (3) SA 296 (SCA) at 301B-C. See also *Van Niekerk & another v Van Niekerk & another* 2008 (1) SA 76 (SCA) paras 3-7.

should be disposed of by the same court at the same time. Thus even if, technically, an order is final in effect, it may be inappropriate to allow an appeal against it when the entire dispute between the parties has yet to be resolved by the court of first instance." (Own underlyingin).

[32] After perusing my order, written reasons, and considering submissions by counsel, I am of the view that the appeal would neither have reasonable prospect of success nor that there exist other compelling reason why the appeal should be heard in respect of the order removing the matter from the unopposed motion court roll to be enrolled in an opposed motion court.

[33] Although the general rule is that costs follow the result and the respondents were successfully in opposition of this application for leave to appeal. However, in this case I am of the view that the interest of justice will be served if an order is granted that each party should pay its own costs.

Order

[34] Consequently, I make the following order:

1. Leave to appeal either to the full bench of this Division or Supreme Court of Appeal is dismissed.
2. Each party to pay its own costs


N. SKIBI
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of hearing : 20 February 2026
Date of Judgment : 6 March 2026

For the Applicant:

Adv. Mukwevho instructed by Makgopa
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For the Respondent:

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