

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2024-135318

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE: 1 April 2026

SIGNATURE OF JUDGE:



In the matter between:

NEILOPAHR CASSIM

Applicant

and

**GAUTENG PROVINCIAL LEGAL PRACTICE COUNCIL
(PROVINCIAL LPC)**

1st Respondent

CHAIRMAN OF APPEALS TRIBUNAL (LPC)

2nd Respondent

CHAIRPERSON OF PROVINCIAL LPC INVESTIGATING

COMMITTEE, DR B BEKINK

3rd Respondent

ADVOCATE M PHUKUBJE – MEMBER OF
PROVINCIAL LPC INVESTIGATING COMMITTEE

4th Respondent

JOHN FEDERICK SCHICKERLING

5th Respondent

JUDGMENT : APPLICATION LEAVE TO APPEAL

D van den Bogert AJ

- [1] Given the number of unfortunate and mostly inappropriate accusations of improprieties levelled against me, in my capacity as a judge, one would be inclined to grant leave to appeal, to allow another court to deal with the applicant's remarks. That is, however, not my job in deciding an application for leave to appeal and it would not be in the interest of justice to do so. The applicant's attack upon the judiciary is further irrelevant to the case that I decided.
- [2] In this respect I am reminded by the opposing respondents of the judgment of the Supreme Court of Appeal in *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 (31 March 2021) where the court says in paragraph 10:

"...If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates 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."

[3] The Supreme Court of Appeal also warns that a sound rational basis for the conclusion that there are prospects of success, must be shown to exist. Those are absent in the applicant's application for leave.

[4] Another important factor is this. It is well established that an appeal lies against the order and not the reasoning of a judgment. In *Tecmed Africa (Pty) Ltd v Minister of Health* [2012] 4 All SA 149 (SCA) the Supreme Court of Appeal held:

"First, appeals do not lie against the reasons for the judgment but against the substantive order of a lower court. Thus, whether or not a court of Appeal agrees with a lower court's reasoning, would be of no consequence if the result would remain the same (Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd 1948 (3) SA 353 (A) at 354)..."

[5] The largest part of the present application for leave consists of allegations that I, as the judge, am biased and did not comply with my duty in terms of section 165(2) of the Constitution. That section stipulates that courts must be independent and apply Constitution and the law impartially and without fear, favour or prejudice. The applicant who decided to launch a personal attack upon the judiciary, did so in her application for leave to appeal for the first time ever. She did not, at any stage during the proceedings or prior to the hearing of the application for leave to appeal, bring an application for my recusal.

[6] The rather contemptuous way the court is attacked in an application for leave to appeal does therefore not assist the applicant. This is so because her allegations of me not being impartial do not flow from the judgment, but they are complaints about conduct that preceded the actual hearing of her case. I did not decide on my own impartiality, and therefore no appeal in respect of the applicant's ex post facto averments is possible.

[7] The whole of paragraph 1 and subparagraphs 1.1 to 1.14 constitutes such an attack upon me. The only recognisable reference made to the judgment appealed against, is where the applicant deals with the issue of costs. The applicant misquotes and misinterprets paragraphs 73 up to 76 of my judgment. Instead, that is the part where I refused to grant costs on a punitive scale against her. That assisted the applicant. It resulted in an order where cost was awarded

in favour of the opposing respondents against the applicant on a party and party scale and not on a punitive scale as requested by the opposing respondents.

- [8] The remainder of paragraphs 1 and its subparagraphs deal with the averment that I as a judge violated the provisions of section 165 of the Constitution. It has nothing to do with the judgment or order made and can never constitute grounds for an appeal. It is ill-considered.
- [9] That leaves several other grounds with which I shall deal in short.
- [10] The second ground seems to be that the court misdirected itself in finding that the applicant's reliance upon rule 53 of the Uniform Rules of Court, precluded her from relying on section 8 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). On a proper interpretation of my judgment, I decided that PAJA was applicable and as a natural consequence, one will not find that I ever found that the applicant was precluded from relying on section 8 of PAJA. In paragraphs 6 and 7 of the judgment I say exactly the opposite of that which the applicant now alleges in her application for leave to appeal. This ground for appeal is therefore plainly wrong.
- [11] The third ground is that the court misdirected itself in finding that the applicant's complaint that the fifth respondent failed to collect money available to the company in business rescue was hotly disputed. The application that served before court is a review. The notion that the fifth respondent did not file an answering affidavit, does not take away the fact that the functionary at the Legal Practice Council that took the decision not to prosecute, was faced with disputed issues. In any event, the applicant attacks the reasoning of the judgment and not the outcome. Had the fifth respondent indeed opposed, it would not have made the outcome of the review better for the applicant.
- [12] The fourth ground is that the court misdirected itself in not finding that the fifth respondent committed fraud when the fifth respondent insisted that money be paid into a trust account rather than into the account of the company in business rescue. What served before the court was a review and not an appeal. I was not called upon to make any findings on whether the conduct of the fifth respondent constituted fraud or not.

- [13] The fifth ground is that the court misdirected itself in not making the fifth respondent, who did not oppose the application, liable for the cost of the applicant. My order makes no one liable to pay the cost of the applicant. The applicant was directed to pay the cost of the opposing respondents because she was unsuccessful. No basis exists why the fifth respondent must pay the applicant's costs when she is unsuccessful.
- [14] The remainder of the application for leave to appeal revolves around the applicant's submissions that the appeal involves questions of law of importance and that there are compelling reasons why the appeal should be heard. Absent a prospect of success on appeal, precedent dictates that I cannot grant leave to appeal. A court should not be persuaded in an application for leave to appeal to constitute an appeal court merely to debate a rather novel legal point that will not change the outcome reached by the lower court.
- [15] Certainly, not in a case such as this, where the applicant claims that the legal point is that I precluded her from relying on section 8 of PAJA. As indicated hereinabove, I did not. Instead, I specifically found that PAJA is applicable. The fact that the applicant did not want to commit herself to accepting that it is a PAJA review, will also not change the outcome. The order will remain.
- [16] It is therefore wrong for the applicant to submit that the appeal involves a question of law of importance on whether the applicant's reliance on rule 53 precludes reliance on section 8. The judgment says the opposite.
- [17] At the hearing of the application for leave to appeal, the applicant had another string to her bow. Premised on the case of *Logbro Properties CC v Bedderson NO and Others 2023 (2) SA 460 (SCA)* the applicant argued that she was entitled to raise an entirely new point of law at the hearing of the application for leave to appeal. That this can be done, if all the facts are before the court and they have been properly ventilated, seems to be correct.
- [18] I understood the legal point to be that I did not properly deal with section 41 of the Legal Practice Act 28 of 2014. That section stipulates that a legal practitioner may within 30 days of being informed of the decision of the disciplinary committee lodge an internal appeal. The appeal authority of the LPC refused to hear the

appeal because the appeal was filed late and they claimed not to have condonation powers.

[19] I did not make a definite finding on whether the appeal tribunal has condonation powers or not. I merely mentioned with reference to SCA case law that such proposition seems to be correct.

[20] My judgment then went further and I, in any event, fully dealt with the review.

[21] At the hearing of her leave application, I debated with the applicant that she did not ask in her notice of motion for a remittal to the Appeal Tribunal should a court find that it has in fact condonation powers. Instead the only effective relief that she requested is set out in paragraph 6 of her notice of motion, namely a declarator that *"the prima facie evidence furnished by the applicant in her complaint under reference number S Mundau 4012/2023 and reference number 3449/2023 constitutes prima facie evidence which may lead to a finding of professional misconduct on the part of the fifth respondent and consequently the matter is referred to the Disciplinary Committee of the first respondent for termination."*

[22] There was no request to remit to the appeal tribunal to reconsider its decision not to hear the appeal. Moreover, the applicant insisted that the review on the merits be heard. That alone makes the condonation issue immaterial. It will therefore have no practical effect on her case and an appeal on that point is not justified.

[23] As such, this application for leave to appeal is dismissed with cost, such cost to include the cost of counsel on scale C.



D VAN DEN BOGERT
ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 1 April 2026.

Appearances

Counsel for the Applicant: In person

Instructed by: Mbazima Dickson Attorneys
Ref.: Mr Dickson

Counsel for respondent: NC Maritz

Instructed by: Fourie Fishmer Incorporated
Ref: CP Fourie/vm/MAT8896

Date of Hearing: 26 March 2026

Date of Judgment: 1 April 2026