

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2023-042317

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

DATE

SIGNATURE

In the application for leave to appeal by

DAVIES, MICHELLE LOUISE

APPLICANT

And

MOMSEN, ALICE AGNES JOYCE

RESPONDENT

In re the application by

MOMSEN, ALICE AGNES JOYCE

APPLICANT

And

DAVIES, MICHELLE LOUISE

FIRST RESPONDENT

**THE REMAINING FURTHER UNLAWFUL
OCCUPIERS OF UNIT 2[...], J[...] L[...], B[...]
ROAD, E[...], EDENVALE**

SECOND RESPONDENT

**EKURHULENI METROPOLITAN
MUNICIPALITY**

THIRD RESPONDENT

JUDGMENT

MOORCROFT AJ:

Summary

Application for leave to appeal – section 17(1)(a)(i) and (ii) of the Superior Courts Act - reasonable prospect of success or some other compelling reason why the appeal should be heard

Application to lead new evidence – dismissed

Application for leave to appeal out of time – not condoned

Order

[1] In this matter I make the following order:

IT IS ORDERED THAT:

- 1. The application to lead new evidence is dismissed;*
- 2. The late delivery of the application for leave to appeal is not condoned;*
- 3. The application for leave to appeal is dismissed;*
- 4. The first respondent (applicant in application for leave to appeal) is ordered to pay the costs of the application on the scale as between attorney and own client.*
- 5. The Registrar is requested to furnish a copy of the application on CaseLines together with this order and the judgment to the Legal Practice Council (LPC), and the National Prosecuting Authority (NPA).*

[2] The reasons for the order follow below.

[3] This is an application by the 1st respondent for leave to appeal against a decision¹ handed down by me on 22 October 2025 in the opposed motion court. I refer to the parties as they were referred to in the decision of October 2025.

[4] Section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard. The requirement that leave must be obtained serves the purpose of a gatekeeper and ensures that valuable judicial resources are not wasted.²

[5] An appeal lies against the decision of the court and not against the reasons for the decision.³

[6] In *Ramakatsa and others v African National Congress and another*⁴ Dlodlo JA summarised the authorities as follows:

“[10] .. 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. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[7] In terms of rule 49(1)(b), application for leave to appeal must be made within fifteen days after the date of the order appealed against. The court may, upon good cause shown, extend the period.

[8] The application for leave to appeal⁵ was served on the applicant's attorneys by Sheriff on 18 November 2025. The applicant argues that it was delivered out of time as

¹ Section 16 (1) (a) of the Superior Courts Act.

² *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd* 2013 (6) SA 520 SCA para 24.

³ *Medox v Commissioner, South African Revenue Service* 2015 (6) SA 310 (SCA) para 10 and *Tecmed Africa (Pty) Ltd v Minister of Health and Another* [2012] All SA 149 (SCA) para 17.

⁴ *Ramakatsa and others v African National Congress and another* [2021] JOL 49993 (SCA), also reported as *Ramakatsa v ANC* 2021 ZASCA 31.

⁵ Caselines 31-1.

more than 15 court days had elapsed since the date of the judgment.

[9] There is a dispute about whether the application was delivered to the Registrar within 15 court days. The Acting Chief Registrar advises as follows:⁶

Good day

*We have gone through the electronic court file in this matter and regarding case no: **2023-042317**:*

1. The Leave to Appeal application was submitted by the Applicant (Michelle Davis) on 18 November 2025. Such Application was processed and accepted by the Registrar's Office on 21 November 2025.

2. There was no Leave to Appeal which was submitted/uploaded onto Court Online on 11 November 2025.

3. The Court Online email notification bearing CRM number: 0002314 was manipulated to reflect the date of 11 November 2025. Attached is the correct and original email notification which was auto generated by the system and sent to the email address I[...]

4. The attached document shows that the date and time when the Leave to Appeal was submitted or uploaded onto Court Online was 18 November 2025.

[10] The 1st respondent is adamant that the application was filed on the 11th. She relies on an email notification⁷ reflecting the date of 18 November 2025 referred to by the Registrar in paragraph 3 of the email quoted above. The Registrar believes that this email was manipulated.

[11] Allegations of manipulation of court records and correspondence are serious issues and ought to be investigated by the authorities. For reasons set out in my judgment of 22 October 2022 I requested that the matter be referred to the authorities to investigate the allegations that forged court records have been produced and I make such an order in this matter as well. Both the first respondent and the applicant agreed that such an order be made and that the matter be investigated.

⁶ Caselines 01-1.

⁷ Caselines 01-13.

[12] The 1st respondent did not apply for condonation of the late application for leave to appeal that was, on any possible version, only delivered to the applicant on 18 November 2025. I do not condone the late delivery but I also deal with the merits as a refusal to condone the late delivery of an application for leave to appeal does not constitute a refusal of leave to appeal.⁸

[13] In the initial application the respondents initially relied on a number of defences,. Those were

13.1 A forgery purporting to be an order of court dated 7 February 2018.

13.2 Compliance with a demand for rental on 10 February 2020.

13.3 A second forgery purporting to be a court order dated 16 November 2022.

13.4 A ruling by the community services ombud in terms that did not entitle the 1st respondent to occupation – it merely provided for the garnishing of rental paid by the 1st respondent in respect of the property in order to pay amounts due to the body corporate.

[14] Together with the application for leave to appeal the 1st respondent also sought leave to file a further affidavit presenting new evidence that she stated⁹ was given to her attorney (who no longer represented her when the matter was argued) but ignored. The new evidence consists of emails that the 1st respondent claims are evidence of a new written lease that the applicant had not objected to and therefore a new contract came into existence on the basis that the failure to object amounted to tacit consent.

[15] No case is made out¹⁰ for allowing new evidence on appeal. The 1st respondent

⁸ *National Union of Metalworkers of South Africa v Jumbo Products* CC 1996 (4) SA 735 (A).

⁹ Caselines 31-4.

¹⁰ See *Gumbo NO v Spruyt* 2020 JDR 1761 (GP) para 12 and *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC) paras 36 and 37.

does not say how it came to be that she initially gave the information (or some of it) to her attorney, then failed to attach it to the papers in this application, and has “*now found evidence that I was unable to attach to my initial defence of the matter as the time frames to submit new evidence has passed.*”

[16] I therefore dismiss the application for leave to adduce new evidence. The first respondent has failed to make out a case for leave to appeal to be granted and the application is dismissed.

[17] The agreement between the parties provided for attorney and client costs and there is no reason not to uphold the agreement in this respect.

[18] .

[19] For these reasons I make the order set out above.

MOORCROFT AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected 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 of the judgment is deemed to be **16 FEBRUARY 2026**

APPEARANCE FOR THE APPLICANT
(RESPONDENT IN APPLICATION FOR
LEAVE TO APPEAL):

J E MANNERING

INSTRUCTED BY:

BMV ATTORNEYS

APPEARANCE FOR THE FIRST RESPONDENT
(APPLICANT IN APPLICATION FOR LEAVE TO
APPEAL):

FIRST RESPONDENT IN
PERSON

INSTRUCTED BY:

-

DATE OF ARGUMENT:

30 JANUARY 2026

DATE OF JUDGMENT:

16 FEBRUARY 2026