REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 48015/2021

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE 09/04/2026 SIGNATURE [redacted]

In the matter between:

ERNEST MAHLAMBI **Applicant**

And

ROAD ACCIDENT FUND **Respondent**

Delivered: This matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and ***is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be the 9th April 2026***

LEAVE TO APPEAL: JUDGEMENT

LEDWABA AJ

[1] On unopposed basis, the applicant seeks leave to appeal against what it calls *"costs judgement and the orders"* dated 28 October 2025 granted in the presence of the applicant's legal representative.

[2] The leave to appeal notice came to my attention by way of an email from Ms Tryphina Sekete dated the 28th January 2026.

[3] The parties were directed to deliver their heads of argument by the 6th March 2026. Both parties did not file the heads of arguments as at the directed date.

[4] The appeal notice is dated the 8th December 2025 and was served at the State Attorney's office on the 11 December 2025.

[5] In terms of Rule 49(1)(b) of the Uniform Rules and subject to the good cause case shown, an application for leave to appeal must be made within fifteen days after the date of the order appealed against, or within fifteen days of the giving of the reasons for judgment.

[6] By way of the letter dated the 13th November 2025, the applicant requested the reasons for judgment. They were given on the 21st November 2025. The leave to appeal application was made within the prescribed period.

[7] The respondent conceded the merits and was ordered to pay one hundred percent of the applicant's proven or agreed damages. General damages were postponed *sine die*. The respondent was further directed to undertake to pay costs for future damages.

[8] The basis of the leave to appeal is stated as being that the judgment erred in deleting paragraphs 5.1 to 5.6 of the draft order presented on behalf of the applicant. The leave to appeal application submits that the judgment should have found that the applicant is entitled to the specific costs which were

allegedly necessary in the quantification of the matter. The applicant submits that the deletion of the items placed the burden of costs on the applicant who was not responsible for the collision.

[9] Paragraphs 5.1 and 5.4 are expressly stated to be subject to the discretion of the Taxing Master.

[10] Paragraph 5.1 is stated as being the reasonable taxed fees for consultation with the experts who are not mentioned in the presented draft order. The fact that the experts were not mentioned in the presented draft order was pointed out to the applicant's legal representative during submission and in the reasons for judgment. The reports included the medical and related costs, which medical experts are only listed in the Bill of Costs attached to the taxation notice dated the 21st November 2025 (the Bill of Costs), which is a date after the leave to appeal notice.

[11] Paragraphs 5.2 and 5,3 are stated as including transportation and accommodation costs, including for the medical examinations and court related attendances.

[12] Paragraph 5.4 is stated as including attorney's travelling costs and pre-trial conference.

[13] Paragraph 5.5 incudes preparation of applicant's bundles of documents and traveling costs to deliver them.

[14] Paragraph 5.6 was partly granted. It related to the applicant's counsel's fees with specific items being deleted.

[15] Even before the leave to appeal has been finalized, the applicant submitted for taxation the Bill of Costs. This Bill of Costs includes items the applicant claims need to be considered by the Taxing Master for taxation. This is an admission by the applicant that those items are still subject to the discretion of the Taxing Master and that in the event of one party being aggrieved by the Taxing Master's decision, the aggrieved party would have the Rule 48 of the Uniform Rules review option process by this court.

[16] In paragraph 9.2 of the founding affidavit, the applicant says: "*Should the Taxing master refuse to include the costs in the court order, the said costs would have to come out of the*

pockets of the Applicant"

[17] This indicates that on behalf of the applicant, there is acknowledgement that the *"costs judgement and the orders"* are to be considered by the Taxing Master.

[18] While the draft order should deal with the principle of payment, Rule 48(1) read with Rule 70(1) of the Uniform Rules expressly provide that the Taxing Master is the compertent authority to tax a billl of costs and make the ruling in relation to any item or part of an item in the presented biil of cost.

[19] The decision of a Taxing Master with regard to the disputed bill is the exercise of public power.[1] This is subject to review by the court in terms of Rule 48 (7) of the Uniform Rules.

[20] It is an abuse of the court process to appeal against disallowed item in the draft order while a party is aware that such item can still be submitted for taxation by the Taxing Master.

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[1] Coetzee v Taxing Master, South Gauteng High Court & Another (2012) ZAGPJHC 175; 2013(1) SA 749GSJ-par 8)

[21] The leave to appeal application fails on the basis of this abuse court process. In the event of it being wrong to conclude that the leave to application fails on the basis of court process abuse, the applicationn is further considered on the basis stated in the following paragraphs.

[22] The next question is whether what was granted on the 28th October 2025 constitutes a decision of the High Court within the meaning of section 16(1)(a) of the Superior Courts Act 10 of 2013 (the Act).

[23] Appealability has to do with whether this court has jurisdiction to hear an appeal.[2] The jurisdictional requirements for a civil appeal from the High Court sitting as a court of first instance are that there must be a decision of the High Court within the meaing of section 16(1)(a) of the Act and that the required leave to appeal must be granted under section 17(2) of the Act either by the High Court or the Supreme Court of Appeal.[3] The

[2] GRDGOLD Limited & Another v Nkala & Others (2023) ZASCA 9-par 13
[3] GRDGOLD Limited & Another v Nkala & Others (2023) ZASCA 9-par 17

decision appealed against must be a "judgment or order" and the necessary leave to appeal must have been granted.[4]

[24] In terms of section 165(5) of the Constitution, an order or decision issued by a court binds all persons to whom and the organ of state to which it applies.

[25] The legal principle is that for an order or judgment to be appealable, it must be final or definitive of the rights of the parties to the matter .[5] An appealable order, judgment or decision is one which is final in effect and not susceptible to reconsideration by the court that granted it, is definitive of the rights of the parties, and has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.[6]

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[4] Zweni v Minister of Law and Order (1992) ZASCA 197; (1993) 1 All SA 365(A); 1993(1) SA 523- par 5

[5] Unica Iron and Steel (Pty)Ltd & Another v The Minister of Trade and Industry & Another (2023) ZASCA 42- par 11; Competition Commission of South Africa v Standard Bank of South Africa 2020(4) BCLR (CC) par 46-47

[6] Zweni v Minister of Law and Order (1992) ZASCA 197; (1993) 1 All SA 365(A); 1993(1)SA 523(A) at -par 536B)

[26] As a general principle, an order is a decision which has three attributes: it must be final in effect and not susceptible of alteration by the court of first instance, it must be definitive of the rights of the parties and must have the effect of disposing of the relief claimed in the main proceedings.[7]

[27] The judgment must have final effect. [8]

[28] There is no difference in the meaning assigned to the phrase "judgment or order" in section 20 of the Supreme Court Act and a "decision" in section 16(1)(a) of the Act. [9]

[29] Generally a ruling does not constitute a 'decision' unless it has three attributes: it must be final in effect; it must be definitive of the rights of the parties; and it must have the effect of disposing of at least a substantial part of the relief claimed.[10]

[30] By way of interpretation, rulings are not appealable decisions.[11]

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[7] Arcus v Arcus (2022) ZASCA 9; (2022)All SA 626(SCA) 2022(3) SA 149(SCA)(21/01/22)-par 15 : TWK Agricultural Holdings (Pty)Ltd v Hoogveld Boerderybeleggings(Pty) Ltd & Others (2023) ZASCA 63; 2023(5) SA 163(SCA) –par 21 ; Koop NO & Others v National Director of Public Prosecutions (2023) ZASCA 141 : par 22 ; **Cilliers** NO & Others v Ellis & Another (2017) ZASCA 13(SCA); **Secona** Freight Logistics CC v Samie & Others (2023) ZASCA 183- par 19 and cited cases .

[8] International Trade Administration Commission v SCAW South Africa (Pty) Ltd (2010) ZACC 6 ; 2012(4) SA 618(CC) ; 2010(5) BCLR 457(CC) -par 49

[9] Neotel (Pty) Ltd v Telkom SA Soc Ltd & Others (2017) ZASCA 47-par 12; Sv Van Wyk (2014) ZASCA 152; 2015(1) SACR 584(SCA) at 591; Firstrand Bank Limited t/a First National Bank v Makaleng (2016) ZASCA 169) par 10-15

[10] Cipla Agrimed (Pty) Ltd v Merc sharp Dohme Corporation & Others (2017) ZASCA 134; 2018(6) SA 440 – par 18;

[11] Zweni v Minister of Law and Order (1992) ZASCA 197; (1993) 1 All SA 365(A); 1993(1) SA – par 9(2)

What results from the presented draft order, especially the one presented as subject to the Taxing Master's discretion, is more of a ruling which has no attributes of a judgment referred to in section 165(5) of the Constitution. It does not qualify to be subjected to the appeal process.

[31] The appeal notice submits that it is in the interest of justice that the appeal is allowed as contemplated in section 17(1)(a)(i) and (ii) of the Act

[32] The founding affidavit deposed to support the application rightly points out that the test for leave to appeal is set out in section 17(1) of the Act.

[33] Section 17(1)(a) of the Act allows the hearing court to grant leave to appeal where the judge concerned is of the opinion that an appeal would have a reasonable prospects of success or there are compelling reasons which exist why an appeal should be heard, such as the interest of justice. If the court is unpersuaded that there are reasonable prospects of success, it must still enquire into whether there are compelling reasons to entertain an appeal. If the 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 [12].

[34] The applicant has not made out a case that persuades that another court would reach to a different conclusion. It is still not convincing that the applicant has made out a case for the granting of leave to appeal.

[35] The application is not opposed to justify any costs order.

Order

[36] The application for leave to appeal is declined.

[37] There is no order as to costs.

[redacted]

LEDWABA LGP
ACTING JUDGE OF THE HIGH COURT,
NORTH GAUTENG DIVISION
PRETORIA.

<u>APPEARANCES</u>

[12] Ramakatsa & Others v African National Congress & Another (2021) ZASCA 31-par 10

Heard on: 28 October 2025

Heads of arguments due by : 6 March 2026

Judgement delivered on: 9 April 2026

Applicant's legal represenative: Mahlangu PM Attorneys
520 Spuy Street
Sunnyside
PRETORIA

Respondent's legal represenative: Unrepresented.