



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 015484/2023

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES:
NO
- (3) REVISED.
- (4) Date: 21 April 2026

Signature: _

In the matter between:

FIPRO INVESTMENTS CC

Applicant

And

CHIEF EXECUTIVE OFFICER (SANRAL)

First Respondent

CHIEF FINANCIAL OFFICER (SANRAL)

Second Respondent

SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD

Third Respondent

SANKOFA INSURANCE BROKERS (PTY) LTD

Fourth Respondent

JUDGMENT

NYATHI J

INTRODUCTION

[1] This is an application for leave to appeal against the judgment and order granted by this Court on **18 September 2025**, in terms of which the applicant's application for contempt of court, ancillary review relief, and related prayers were dismissed with costs.

[2] The application is opposed by the first to third respondents. The fourth respondent similarly opposes the grant of leave.

[3] The applicant contends that this Court misdirected itself in adjudicating issues which, so it is argued, fell outside the proper scope of the contempt proceedings and had already been determined in an earlier review before Lingenfelder AJ. Central to the application is the submission that there are reasonable prospects that another court would arrive at a different conclusion.

THE APPLICABLE LEGAL PRINCIPLES

[4] Section 17(1) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where:

“(a) the appeal would have a reasonable prospect of success; or
(b) there is some other compelling reason why the appeal should be heard...”

[5] The threshold is deliberately **stringent**. It requires more than a mere possibility that a different court may disagree. As was stated by the Supreme Court of Appeal in *Smith v S* 2012 (1) SACR 567 (SCA) at para 7, an applicant must demonstrate a sound, rational basis for the conclusion that an appellate court **could reasonably** come to a different result.

[6] Even where prospects of success are found wanting, the Court must still consider whether there exists some *other compelling reason* to entertain the appeal.

[7] The fourth respondent raised a further point, highlighting the fact that the appeal is moot. Section 16(20)(a)(i) permits a dismissal of an appeal which would have no practical effect or result due to mootness.

THE NATURE OF THE PROCEEDINGS BEFORE THIS COURT

[8] As was recorded in the judgment sought to be appealed against, the applicant's founding affidavit and notice of motion expressly sought:

8.1 an order declaring the first and second respondents to be in contempt of the order granted by Lingenfelder AJ on 7 October 2024; and

8.2 further relief reviewing, setting aside, and substituting the decision by SANRAL to award the tender to the fourth respondent.

[9] The contention advanced on behalf of the applicant that this Court ought to have confined itself solely to the issue of contempt cannot be sustained when regard is had to the relief as framed. A court is bound to determine the dispute placed before it by the parties, as defined by the pleadings.

[10] The applicant did not amend its notice of motion, abandon any prayers, or seek a separation of issues. In those circumstances, it was neither competent nor appropriate for this Court to ignore substantive relief squarely sought on the papers.

MOOTNESS: A JURISDICTIONAL AND DISPOSITIVE CONSIDERATION

[11] The relief sought throughout this litigation concerns the award of a specific public tender for the provision of insurance brokerage services to SANRAL for a **fixed period of three years**, ending in **September 2025**.

[12] It is common cause, and recorded in the judgment a quo, that the tender **has expired**.

[13] Any appeal against the order of this Court would therefore have **no practical effect** on the rights or obligations of the parties. The applicant can no longer be awarded the tender, nor can the award be undone in any meaningful sense.

[14] Section 16(2)(a)(i) of the Superior Courts Act provides that an appeal **may be dismissed on this ground alone**. The jurisprudence of the SCA consistently affirms that courts should not entertain appeals that are abstract, academic, or hypothetical.

[15] While courts retain a discretion to entertain a moot appeal in exceptional circumstances, that discretion is exercised only where the matter raises a discrete legal issue of public importance or where clarity of the law is required for future cases.

[16] The present matter raises neither. It concerns the application of settled principles of contempt and administrative review to a closed factual matrix.

[17] This consideration alone is sufficient to refuse leave to appeal.

ALLEGED MISDIRECTION BY THE COURT

[18] The applicant's principal complaint is that this Court impermissibly revisited issues already determined by Lingenfelder AJ, alternatively that it relied on factual material (including *annexure AA4*) that was not before that Court.

[19] This submission is misconceived.

[20] Firstly, the proceedings before this Court were **not** a continuation of the original review. They constituted a **new application**, albeit issued under the same case number, in which the applicant sought fresh relief, including a declaration of contempt and a further review and substitution.

[21] Secondly, in contempt proceedings, the Court is enjoined to consider all evidence relevant to the question whether the prior order was complied with, including evidence explaining alleged impossibility of compliance or demonstrating *bona fide* execution of the order. Such evidence is not confined to the record that served before the court granting the original order.

[22] The applicant's attempt, in effect, to preclude the respondents and the fourth respondent from placing relevant evidence before this Court because it had not been introduced earlier, finds no support in principle or authority.

[23] This Court considered annexure AA4 and related evidence solely for the purpose of determining whether the respondents had complied with the order of Lingenfelder AJ and whether the elements of contempt—wilfulness and *mala fides*—had been established beyond reasonable doubt. No misdirection has been demonstrated in that regard.

SECTION 17(1): REASONABLE PROSPECTS OF SUCCESS

[24] Even assuming the matter were not moot, the applicant has failed to meet the heightened threshold required by section 17(1)(a)(i).

[25] The applicant has not identified any material error of law, misapplication of principle, or plainly wrong factual finding in the judgment of this Court.

[26] The submissions advanced largely reprise arguments fully ventilated in the main hearing and rejected for reasons clearly articulated in the judgment. Disagreement with

the outcome does not equate to reasonable prospects of success on appeal. (*Ewe/s v Francis and Others* 2025 ZAWCHC).

[27] Nor has the applicant demonstrated that another court would reasonably conclude that this Court ought to have ignored portions of the relief expressly sought, or that it erred in finding that the respondents complied with the prior order and were not in contempt.

NO OTHER COMPELLING REASON

[28] The matter raises no novel question of law, no conflict in the authorities, and no issue of public importance warranting appellate intervention notwithstanding poor prospects of success.

[29] The dispute is fact-bound and turns largely on the applicant's litigation strategy in framing its relief. Such circumstances do not constitute a compelling reason for an appeal to be entertained.

COSTS

[30] The applicant also challenges the costs order. It is trite that costs lie within the discretion of the court of first instance and will not lightly be interfered with absent a demonstrable misdirection.

[31] No basis has been laid for the conclusion that this Court exercised its discretion capriciously, upon a wrong principle, or without substantial reason.

CONCLUSION

[32] The application for leave to appeal cannot succeed because the proposed appeal is moot and would have no practical effect as contemplated in section 16(2)(a)(i). And

[33] The applicant has failed to satisfy the requirements of section 17(1) of the Superior Courts Act. There is no reasonable prospect that another court would come to a different conclusion, nor is there any other compelling reason for the appeal to be heard.

ORDER

Accordingly, the following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay the costs of the application for leave to appeal, including the costs of senior counsel where so employed. (Party-and-party scale B).

— 
J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 09 April 2026

Date of Judgment: 21 April 2026

Appearances:

On behalf of the Applicant: Ms. L Mbanjwa

Applicant's attorneys: L. Mbanjwa Inc.

On behalf of Respondents 1 to 3: Adv. Thema

Attorneys for the 1st to 3rd Respondents: Madiba Motsai Masitenyane & Githiri Attorneys,
c/o Ndaba H.E. Inc.; Pretoria

On behalf of the 4th Respondents: Adv. SR Mabaso

Attorneys for the 4th Respondents: MOTA Attorneys Inc.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 21 April 2026.