

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

Case Number: 2026-053157

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____ DATE	_____ SIGNATURE

In the matter between:

M[...] M[...] M[...] OBO S[...] M[...]	Execution Creditor/ Applicant
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And

FIRSTRAND BANK LTD	First Respondent
VILAKAZI MARY	Second Respondent
DAVIAS MARKOS GEORGE	Third Respondent
BURGER JOHAN PETRUS	Fourth Respondent
WINTERBOER THOMAS	Fifth Respondent
NAIDOO PREMILLA DEVI	Sixth Respondent
VON ZEUNER LOUIS LEON	Seventh Respondent
ROSCHERR ZELDA	Eight Respondent
SIBISI SIBUSISO PATRICK	Ninth Respondent
ISAACS TAMARA CAROL	Tenth Respondent
MAKOSHOLO PABALLO JOEL	Eleventh Respondent

ROAD ACCIDENT FUND
SHERIFF CENTURION EAST

Twelfth Respondent
Interested Party

JUDGMENT – LEAVE TO APPEAL

STRYDOM, J

- [1] This is an application for urgent leave to appeal against my judgment delivered on 30 March 2026, where I made the following order:
- a. The application is struck off the roll for lack of urgency.
 - b. The applicant to pay the waste costs occasioned by the filing of this application on scale C.
- [2] Leave to appeal may only be given where a Court is of the opinion that—
- a. the appeal would have a reasonable prospect of success; or
 - b. there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [3] The applicant brought this application on an urgent basis for an order that the 1st to the 11th respondents and the Road Accident Fund ('the RAF') be ordered, and or be compelled, to comply with the applicant's writ of execution obtained pursuant to a court order issued by the Polokwane High Court on 20 January 2026. Further, ancillary orders were sought and obtained, *inter alia*, to permit reliance on hearsay evidence and to seek contempt of court orders against the respondents. Final relief was sought.
- [4] The matter was initially set down to be heard on Tuesday, 17 March 2026, but it was heard on Friday, 20 March 2026. At the hearing, the Court made it clear that the issue of urgency was to be decided upfront, but it also allowed some

argument on the merits of the application, as this was the last opportunity to hear arguments on the merits before the end of the urgent court week. Moreover, the urgency of the matter could not be determined without proper insight into the facts. I could not determine the urgency during the hearing, as affidavits were still being filed during the urgent week. A replying affidavit was, for instance, uploaded onto Caselines on Thursday evening. I was not informed about this. By the time I heard the application, I had not had an opportunity to read this affidavit.

[5] After the argument, I reserved judgment. On 30 March 2026, this Court delivered a written judgment dealing quite extensively with how this matter was placed on the urgent court roll. The Court concluded that, although some urgency was established, the degree of urgency with which this application was brought was not commensurate with the true urgency of the matter itself. The matter was prematurely placed on the urgent roll without affording the respondents sufficient time to file their answering affidavits. This resulted in the late filing of answering affidavits, and replying affidavits were filed even later. For that reason, the Court struck the matter off the roll for lack of urgency and made no finding on the merits.

[6] The applicant in this application for leave to appeal argued that the Court should grant leave to appeal because there was a reasonable prospect that another court would reach a different conclusion. During the argument, the Court engaged with counsel for the applicant and indicated to him that it had not decided the merits of the matter. It was argued that the order effectively amounted to a dismissal of the application. It was argued that the order might

have been interlocutory, but that it would be in the interests of justice to grant leave to appeal, as the Court was dealing with a minor child and, accordingly, the best interests of the minor child should have been paramount.

[7] In deciding whether to grant leave to appeal, the first question is whether the Court decided the merits of the application. If not, whether the decision on the urgency is nevertheless appealable on the basis that the interest of justice would permit leave to appeal to be granted.

[8] On behalf of the respondent, it was argued that the matter was not appealable because the Court had never decided the merits and had struck it from the roll for lack of urgency. It was further argued that the Court exercised its wide discretion in this regard and that it is unlikely that a Court of Appeal would interfere with this Court's exercise of this discretion. It was argued that an appeal would have no practical effect as the grounds for urgency mentioned in the application papers had come and gone. The cut-off date for the minor child's admission into the care facility has lapsed, rendering this issue moot.

[9] From a reading of my judgment and the order made I made, it is clear that I never made a decision on the merits of the matter. I did not decide the issue pertaining to the execution of the writ of attachment or the contempt of court, nor have I decided whether the applicant was entitled to obtain the RAF's bank statements.

[10] I decided the matter after considering only the urgency of this application.

[11] I am satisfied that this decision is not appealable as the ruling did not finally dispose of the merits of the matter. The finding on the urgency of the matter

was interlocutory in nature. After the order was made, the applicant still had the option available to enroll the matter on the ordinary opposed motion roll for consideration; alternatively, the applicant could have set the matter down in another urgent court if the applicant could again make out a case for urgency. This could have been achieved by amending the notice of motion and filing supplementary affidavits if continued urgency could be shown. The applicant elected not to pursue these avenues but rather applied for leave to appeal.

[12] I decided the matter on the basis that the applicant failed to show the extremely high degree of urgency with which she approached the urgent court. This was not a final decision, nor was it a decision that should go on appeal in the interest of justice.

[13] In my view, my decision on the urgency of the matter was not appealable, and for this reason alone, the application for leave to appeal should be refused

[14] The order of the Court is that the application for leave to appeal is dismissed with costs on scale A.

R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 29 April 2026

Delivered on: 05 May 2026

Appearances:

For the Applicant: Adv. T. Moloi

Instructed by: Malatji S Attorneys

For the 1st to 11th Respondents: Adv. N. Konstantinides SC

Instructed by: Van Hulsteyns Attorneys

For the 12th Respondent: Adv. Adv. M. Mogano

Instructed by: State Attorney – Johannesburg