

REPUBLIC OF SOUTH AFRICA

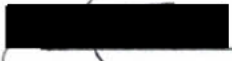


**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2023/ 96485

&

CASE NUMBER: 2024/8205

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
5/5/2026	
DATE	SIGNATURE

In the matter between: -

THE HOLLARD INSURANCE COMPANY LIMITED

Applicant

and

NJR PROJECTS (PTY) LIMITED

First respondent

NHLABANELE JEOPHREY RAMAHLALEROA

Second respondent

PHEANE EDWIN SODI

Third respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand

down is deemed to be on **5 May 2026**.

JUDGEMENT ON APPLICATION FOR LEAVE TO APPEAL

MALI J

- [1] The first respondent under case number 96485/2023 (“Hollard”) seeks leave to appeal against the **applicant** (DBSA) and the third respondent under case number 8205/2024 (“Mr Sodi”) applies for leave to appeal against Hollard. Both cases were argued together, and the judgment which this leave to appeal is sought was delivered on 15 January 2025.
- [2] The application is brought in terms of section 17(1) of the Superior Courts Act 10 of 2013, which provides that leave to appeal may only be granted where the court is of the opinion that the appeal would have a reasonable prospect of success, or that there exists some other compelling reason for the appeal to be heard, including the existence of conflicting judgments.
- [3] The threshold imposed by section 17(1) is stringent. The use of the word “only”, read with “would”, underscores that leave to appeal is not to be granted lightly. As recognised in *Mont Chevaux Trust v Goosen*¹, the standard has been raised beyond the mere arguments.
- [4] In *S v Smith*², it was held that reasonable prospects of success require a dispassionate assessment of the facts and the law to determine whether a court of appeal could reasonably arrive at a different conclusion. There must exist a sound, rational **basis** for such a conclusion; it is insufficient that the case is merely

¹ 2014 JDR 2325 LCC para 6

² 2012(1) SACR 567 (SCA) para 7

arguable. In *MEC for Health Eastern Cape v Mkhitha*³ it is held that leave to appeal "must not be granted unless there truly is a reasonable prospect of success" and "that those prospects are not remote, but have a realistic chance of succeeding"

- [5] Hollard advances several grounds of appeal. In essence, it contends that this Court erred in finding that the advance payment had not been fully recouped; in its interpretation and application of the APG; in permitting the correction of a payment certificate; and in concluding that any alleged non-compliance with the APG requirements was not dispositive. It further contends that the judgment gives rise to conflicting authority. Mr Sodi aligns himself with these submissions.

- [6] The central premise underlying several of Hollard's complaints is the allegation of fraud in relation to the reissue of the interim payment certificate. That premise is unsustainable. No factual foundation was laid to substantiate fraud, nor was any evidence adduced to support collusion between DBSA and the contractor. In the absence of proof, the allegation cannot sustain a reasonable prospect of success on appeal.

- [7] As to recoupment, the undisputed evidence demonstrates that the contractor acknowledged an outstanding shortfall and sought indulgence in respect of repayment. The APG expressly permitted DBSA to regulate its financial arrangements with the contractor as it deemed fit. There was no dispute between DBSA and the contractor regarding the outstanding indebtedness.

- [8] The complaint regarding the correction of the payment certificate is similarly without merit. Properly understood, the correction occurred within a context in which fraud was alleged but not proven. In those circumstances, the finding that the certificate could be corrected does not conflict with established authority.

- [9] Furthermore there is no merit in the contention that the judgment is at odds with prior decisions concerning strict compliance with guarantees. On the facts of this matter, the requirements of the APG were satisfied in substance, and no genuine

³ 2016 JDR 2214 (SCA) Paras 6 to 10.

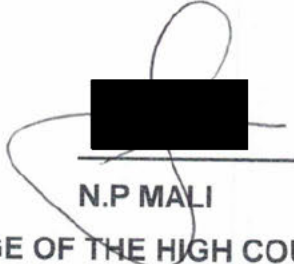
conflict of authority arises that would constitute a compelling reason for an appeal to be heard.

[10] Viewed cumulatively, the grounds advanced do not establish reasonable prospects of success, nor do they disclose any compelling reason within the meaning of section 17(1)(a)(ii).

[11] The application for leave to appeal cannot succeed.

ORDER

1. The application for leave to appeal in case number 96495/2023 is dismissed with costs on Scale C.
2. The application for leave to appeal in case number 8205 /2024 is dismissed with costs on Scale C.


N.P MALI
JUDGE OF THE HIGH COURT

REPESANTATIVES

On behalf of Hollard Insurance:	R Stockwell SC
And	I Posthumous
Instructed by:	Moll Quibel & Associates
For the 3 rd Respondent:	W Pye SC
And	N Loopoo
Instructed by:	Bower & Turner Inc.
On behalf of DBSA	Lee Segeels-Ncube

Instructed by:	Cliffe Dekker Hofmeyr Inc.
Hearing Date:	14 April 2026
Delivery date:	5 May 2026