

IN THE HIGH COURT OF SOUTH AFRICAJOHANNESBURG DIVISION, GAUTENGCASE NO: 2023/123305DATE: 2026-05-07

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES : NO
 (3) REVISED



SIGNATURE

7 May 2026

In the matter between

10 SEKELA XABISO CA INC

Applicant

and

TRANSNET SOC LTD AND OTHERS

Respondents

J U D G M E N T E X T E M P O R E

WILSON, J: On 10 March 2026, I gave judgment declaring
 20 a clause of a contract entered into between the applicant
 and the first respondent in this matter to be unconstitutional
 and reviewing and setting aside the first respondent's
 decision to enter into a contract including that clause. My
 decision depended upon a construction of the clause which
 is explained in my judgment.

The only issue in this application for leave to appeal
 is whether the interpretation I reached was the correct one.
 In seeking to persuade me that there is a reasonable

prospect that a court of appeal would reverse or materially alter my order, counsel for the applicant retraced the ground covered in the argument *a quo*. Counsel did no more than reassert the arguments I heard and determined in the main application.

I am satisfied that the conclusion that I reached *a quo* was the correct conclusion and that there is no reasonable prospect of another court adopting a different interpretation of the relevant contractual cause. I have certainly been
10 given no reason to think in this application for leave to appeal that any particular step of the argument set out in my judgment should be revisited.

For all those reasons, and because no other aspect of my judgment was seriously challenged in the application for leave to appeal, the application for leave to appeal must be refused.

On the question of costs, in the main application, I ordered each party to pay their own costs for reasons that I again set out fully at paragraph 32 of my judgment.
20 Notwithstanding the submissions of counsel for the first respondent, I am not convinced that I should depart from the order I made on the main application in the application for leave to appeal. It seems to me that unless an application for leave to appeal exhibits a manifest abuse of process, a court should be careful not to create the

impression that a costs order is being imposed simply because one of the parties wishes to challenge the judgment reached *a quo*.

For all those reasons, the application for leave to appeal is dismissed, with each party paying their own costs.



WILSON, J
JUDGE OF THE HIGH COURT
7 May 2026

