



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

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 07 May 2026

Case No: 2026-065660

In the matter between:

YOLAN CHETTY N.O

First Applicant

REVESHEN GOVENDER N.O

Second Applicant

GOVINSAMY CHETTY CHETTY N.O

Third Applicant

REGAL INN MIDRAND (PTY) LTD

Fourth Applicant

COLAB SA (PTY) LTD

Fifth Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

First Respondent

CITY POWER JOHANNESBURG (SOC) LTD

Second Respondent

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] The respondents in the main application sought leave to appeal against the order dated 27 March 2026. For reasons that follow, I am not persuaded that another court would reach a different conclusion on any of the issues raised in the application for leave to appeal, or in the supplementary grounds filed on 8 April 2026 after reasons were provided.

[2] The parties will be referred to as they are in the main application.

Background

[3] The urgent application was first served before Noko J on 20 March 2026, when it was struck from the urgent roll to afford the respondents an opportunity to file papers. It was thereafter re-enrolled before this court, and an (interim) order was granted on 27 March 2026 after the respondents had an opportunity to file an answering affidavit. The procedural history is set out in the main judgment and need not be repeated here.

[4] On 27 March 2026, the respondents filed an application for leave to appeal before I had an opportunity to provide reasons for the order, owing to an exceptionally busy urgent court roll. Nonetheless, I provided the reasons on 8 April 2026 and attempted to find a suitable date for all parties to hear the appeal the following week. The respondents indicated that they had no availability that week.

[5] In parallel, the applicants brought a second urgent application under section 18(3). This followed the City's argument that, by appealing, the order is suspended and that they therefore do not need to reconnect the electricity as per the order. That application served before Mia J in the urgent court during the recess. The parties are still awaiting judgment in that matter. According to correspondence with the office of

the acting Deputy Judge President, the delay appears to be the respondents' failure to file heads of argument. The relevance of this will become evident later.

[6] When a second attempt was made to set the matter down for hearing, the respondents stated:

"In order to avoid the risk of parallel consideration of the same issues before two Courts, we humbly propose that the Honourable Justice Maya [sic] first be afforded the opportunity to deliver her ruling, and that the Respondents thereafter be permitted to supplement their grounds of appeal as contemplated in the Rules. Only once this process has been concluded would it be procedurally appropriate for the hearing of the appeal to be entertained."

[7] The applicants disagreed with this approach.

[8] On 21 April 2026, I issued a directive setting the application for leave to appeal down for hearing on 5 May 2026 at 09:00, in line with practice in this division. I directed that any supplementary grounds for leave to appeal be filed by 29 April 2026 at 16:00, that short heads of argument be filed by all parties by 4 May 2026 at 10:00, and that the respondents file a notice of set down. The respondents failed to comply with those directions. Instead, on 4 May 2026, they uploaded the supplementary grounds (unsigned) and, on the same day, delivered an affidavit seeking condonation and a postponement of the hearing. I refused the postponement for the reasons set out at the end of the judgment.

[9] At the hearing on 5 May 2026, notwithstanding the earlier non-compliance, a further indulgence was afforded to the respondents. They were permitted to file heads of argument by 10:00 on 6 May 2026, with the applicants being afforded until 16:00 the same day to file supplementary heads. No heads were filed on behalf of the respondents by 10:00. The only heads received were those filed on behalf of the applicant, just before 16:00. Only thereafter did the respondents send their unedited heads (which were ready in that form the previous day). Another set of (edited) heads was emailed by the attorney at 21:17.

[10] Those facts speak for themselves.

[11] The procedural background set out above is relevant for two reasons. First, the suggestion that the leave application should await the finalisation of the section 18 proceedings is unsustainable: a section 17 application for leave to appeal and a section 18 application serve distinct purposes and involve different enquiries. Second, the respondents have been given repeated and reasonable opportunities to fully advance their case, but they have not utilised them.

Test for leave to appeal

[12] Applications for leave to appeal are governed by the provisions of section 17 of the Superior Courts Act 10 of 2013. Section 17(1) provides as follows:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (a) (i) the appeal would have reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) The decision sought to appeal does not fall within the ambit of section 16(2)(a); and
- (c) Where the decision sought to be appealed does not dispose of all the issues in case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[13] In *MEC for Health, Eastern Cape v Mkhitha*¹ the test was clarified:

"Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why it should be heard.

¹ [2016] ZASCA 176 paras 16 – 17.

An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[14] Therefore, leave to appeal should be refused unless there is a truly reasonable prospect of success, supported by a sound and rational basis in the facts and the law. Anything less than such a realistic chance of success, whether it is an arguable case or a mere possibility, does not meet the statutory threshold.

The notice of motion and the order of Noko J

[15] One ground for appeal is that this Court erred in treating the later notice of motion as an *amended* notice of motion rather than a second notice of motion, and further erred in hearing the matter after it had been struck from the urgent roll by Noko J. Neither point gives rise to reasonable prospects of success.

[16] The record shows that the notice of motion dated 21 March 2026 did not introduce any substantively new relief. The prayers for restoration, interdictory relief, the rendering of an account, the process for debating the account, and interim payment arrangements were already set out in the earlier notice of motion dated 19 March 2026. In other words, the later notice altered the enrolment date and related timelines for the filing of pleadings, not the substantive relief sought.

[17] In those circumstances, whether the second notice is described as an "amended" notice of motion, a second notice of motion or as a notice re-enrolling the same application is immaterial. The substance of the case remained unchanged. The respondents were fully aware of the relief sought and had the opportunity to address it. The date change was for the respondent's benefit.

[18] The order of Noko J does not assist the applicants for leave. A striking from the urgent roll is not a determination on the merits. It simply means, in this case, that the matter was not ripe for hearing in that court at that time. Once the respondents were afforded an opportunity to file their papers, and the matter was re-enrolled on proper

notice, there was no procedural bar to its being heard by another judge in the urgent court. I deal extensively with this in my judgment. There is no reasonable prospect that another court would interfere with the conclusion that the matter was properly before this Court.

Alleged change of cause of action

[19] The next ground is that this Court altered the applicants' cause of action by granting restoration and interdictory relief, after the applicants' counsel in the urgent application correctly admitted that the *mandament van spolie* could not be upheld based on the facts. This argument is not supported by the evidence.

[20] The founding affidavit expressly advanced two related grounds for relief: first, spoliation, and second, interim and mandatory interdictory relief arising from the billing dispute, the applicants' asserted right to continued electricity supply pending lawful resolution of that dispute, and the lack of proper notice before disconnection. The latter ground was not devised at the hearing. It was pleaded from the outset and directly tied to the relief claimed in the notice of motion.

[21] The acknowledgement that the *mandament van spolie* was unavailable does not have the effect of extinguishing the rest of the case. The restoration and interdictory relief had their own distinct pleaded basis. This Court did not create a new cause of action on its own initiative. It decided the case based on the pleadings.

[22] The applicants' reliance on authority for leave to introduce a new and unpleaded cause of action is therefore misplaced, and no other court would reach a different conclusion.

Restoration and interim interdictory relief

[23] The respondents also contend that no proper factual or legal basis existed for the restoration of the electricity supply and the interim interdict against further credit-control steps. This submission fails when the founding papers and the judgment are read together.

[24] The founding affidavit alleged, among other things, that the applicants have had electricity at the property for a long time, that a genuine billing dispute exists, and that they have continued to make payments. It also stated that they tried to resolve the issue through the municipality's procedures and that no proper pre-disconnection or termination notice was given (which, on its own, renders the disconnection unlawful). They also highlighted the commercial harm that the disconnection would cause and the lack of a suitable alternative remedy.

[25] The allegations specifically speak to the requirements for interim interdictory relief. They also support the mandatory relief to restore supply while the dispute is properly resolved. This Court's decision that restoration and interim protection were appropriate was based on the pleaded case and evidence.

[26] The judgment addresses the municipality's power to implement credit control measures but indicates that this power must be exercised in compliance with its statutory and by-law obligations. No persuasive submissions have been made to conclude that another court would overturn those findings.

Statement and debatement / account-rendering process

[27] During oral argument, much emphasis was placed on the idea that the statement-and-debatement process ordered by this Court could occur only if it followed the procedures in the municipality's credit-control policy. This view cannot be accepted. The policy is not a binding norm of general application, as legislation is. Rather, it is an internal tool designed to fulfil the municipality's statutory duties under the Local Government: Municipal Systems Act² ("Systems Act") and related laws. The court does not "implement" policy. A court's role is to apply the Constitution and law, including the municipality's statutory obligation to provide accurate and accessible accounts under section 95 of the Systems Act, and to develop effective interim remedies if those obligations are not met. The absence of a statement-and-debatement mechanism similar to the ordered remedy does not restrict the court's power to require an organ of state to properly account when it alone possesses the necessary information for the other party to protect its rights.

² 32 of 2000.

[28] For the purposes of this leave application, the question is whether there is a reasonable prospect that another court would conclude that this Court lacked the power to direct a structured process requiring the municipality to render a proper account and to engage the applicants in identifying and debating the disputed components of that account.

[29] In my view, there is no such prospect. Section 95 of the Systems Act obliges a municipality to provide accessible and accurate accounts and to furnish proper information to consumers. The judgment already sets out the prolonged failure to provide a coherent account, which lay at the heart of the dispute in this matter. The process directed by this Court was expressly interim and confined to the peculiar facts of this matter. It did not purport to amend the municipality's policy, prescribe a universally applicable procedure, or finally determine the parties' rights. Accordingly, this ground does not establish reasonable prospects of success. Nor does it furnish a compelling reason to entertain an appeal against a competent interim order.

No genuine dispute, no utilisation of internal remedies

[30] The respondents dispute that a proper billing dispute was raised and contend that the applicants in the urgent application approached the Court prematurely, without exhausting internal remedies. The judgment already addressed that contention in detail.

[31] The founding papers documented prolonged engagement with the municipality over several years, including formal queries, reference numbers, meetings, exchanges with municipal officials and attorneys, and repeated requests for a proper reconciliation. The applicants alleged that these attempts produced no effective resolution, despite repeated acknowledgement of a dispute. In the circumstances of this case, as set out in the judgment, the applicants had done what could reasonably be expected of them, with no proper account or resolution. There is no reasonable prospect that another court would find that the urgent application was premature on that basis, whether framed as a question of internal-remedy exhaustion or of urgency. In any event, a decision to hear the matter as one of urgency is a discretionary

procedural decision, which ordinarily does not, on its own, found a competent ground of appeal.

The R300 000 payment and the interim payment regime

[32] The respondents also challenge the order requiring payment of R300 000 into the applicants' attorneys' trust account, contending that the amount was arbitrary or inconsistent with the papers. That criticism overlooks the basis for the order.

[33] As explained in the judgment, the amount of R300 000 was not chosen arbitrarily by the Court. It was based on the applicants' own tender, coupled with their undertaking to continue paying current undisputed charges pending the accounting process. The higher figures relied on by the respondents were not established on the papers as objectively undisputed amounts and were expressly addressed in the judgment.

[34] The payment direction was therefore a temporary and pragmatic measure, as urgent court measures often are, intended to balance the parties' positions while the account was to be debated. It did not finally determine the indebtedness between the parties. No reasonable prospect of success has been shown.

Conclusion on the leave to appeal

[35] The respondents have therefore failed to establish that there is a reasonable prospect of success, nor any other compelling reason for the appeal to be heard.

[36] Several paragraphs of the order are plainly interim and interlocutory, including the interdictory relief and the interim payment arrangements. The respondents have not demonstrated why, in the interests of justice, those interim features should nonetheless warrant appellate intervention at this stage.

[37] Moreover, no genuine risk of "conflicting judgments" has been demonstrated in the ongoing section 18 proceedings. A section 18 application concerns execution while an appeal is pending, whereas a section 17 application addresses whether an appeal

should be granted at all. These inquiries are distinct. The existence of one does not delay the court's obligation to decide the other.

Postponement

[38] The respondents' heads of argument, filed out of time on 6 May 2026, have also been considered as far as the postponement is concerned. They repeat, in slightly different form, the grounds already canvassed in the affidavit in support of condonation and postponement of 4 May 2026. They placed reliance on general principles governing postponements, alleged prejudice if the matter proceeded on the allocated date, and expressed concern about so-called "conflicting judgments" in light of the pending section 18 application before Mia J. They do not, however, advance any lucid explanation for the failure to comply with this Court's directive of 21 April 2026.

[39] The chronology bears repetition. The court requested that the matter be set down for a hearing in the first week of the term (providing the parties with 3 dates), but the respondents were unavailable all week. On 21 April 2026, this Court directed that (a) any supplements to the application for leave to appeal be filed by 29 April 2026 at 16:00; (b) short heads of argument by all parties be filed by 4 May 2026 at 10:00; and (c) the respondents file a notice of set down. That afforded the respondents a full two weeks to prepare and file heads. They elected did not do so. Instead, on the very day heads were due, they filed an affidavit seeking condonation (for the late filing of the supplementary grounds for leave to appeal) and a postponement, without explaining why the two-week period in the directive could not reasonably have been met.

[40] The respondents' stance, namely to file an application for leave to appeal, to resist the setting down of that application on the dates first proposed in mid-April, and then to seek to postpone the eventual hearing because they have chosen not to comply with clear directions, gives rise to a legitimate concern that the litigation is being managed in a manner inconsistent with their obligation, as an organ of state, to litigate responsibly.³ It is neither fair to the applicants, who are entitled to the timely

³ Section 195 of the Constitution states: (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

(b) Efficient, economic and effective use of resources must be promoted.

finalisation of the leave application, nor conducive to the efficient functioning of the urgent court (which includes leave to appeal, which is also treated urgently) to permit an application for leave to appeal to pend indefinitely on such grounds.

[41] Applying the principles of postponements, the respondents have not provided a compelling justification supported by a full and frank explanation. On the contrary, any prejudice from further delay would fall mainly on the applicants, while any prejudice to the respondents is self-created. The application for postponement was therefore refused at the hearing, and the matter proceeded on the merits of the leave to appeal.

Costs

[42] There is no reason to depart from the general principle that costs should follow the result. In light of the history set out above, including the respondents' failure to comply with clear directions, the eleventh-hour postponement application on vague and questionable grounds, and the resulting unnecessary procedural skirmishing, it is appropriate that the respondents be ordered to pay the applicants' costs on the party-and-party scale C as provided for in rule 67A

Order

[43] For these reasons, the following order is made:

1. The application for leave to appeal is dismissed, with costs to be taxed on scale C.


WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:

5 May 2026

Date of order:

7 May 2026

For the applicant:

WKC Pretsch instructed by Harkison
Mungal Inc

For the respondent:

E Sithole instructed by SSM Attorneys Inc