



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2022-012498

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO.

13 May 2026
Date

K. La M Manamela

In the matter between:

CHRISTIAAN TIELMAN GROVÉ

Applicant

and

THE MINISTER OF FINANCE NO

First Respondent

THE SOUTH AFRICAN RESERVE BANK

Second Respondent

KUBEN NAIDOO NO

Third Respondent

ELIJAH MAZIBUKO NO

Fourth Respondent

ANDRE MALHERBE NO

Fifth Respondent

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be 13 May 2026.

JUDGMENT

Manamela, J

Introduction

[1] The applicant brought an application for the review and setting aside of the decision(s) of the South African Reserve Bank ('SARB'), the second respondent, taken by Mr Kuben Naidoo, the third respondent, in his capacity as the Deputy Governor of SARB, and other senior functionaries of SARB including Mr Andre Malherbe, the fifth respondent. The review application, opposed by the second to fifth respondents ('the respondents'), was dismissed with costs in terms of the judgment I handed down on 13 October 2025 ('the Judgment').

[2] On 29 October 2025 the applicant launched this application for leave to appeal the Judgment to the Supreme Court of Appeal ('Leave to Appeal'). The Leave to Appeal, also opposed by the respondents, came before me – through a virtual link - on 13 February 2026 when Mr P Ginsburg SC and Mr KD Iles appeared for the applicant, and Mr M Stubbs appeared for the respondents. This judgment was reserved and, gratefully, benefitted from oral and written submissions by counsel.

Grounds of Appeal

[3] The Leave to Appeal is based on several intricate grounds. Some of these grounds are directed at various conclusions reached in the reasoning in the Judgment as opposed to the substantive order made by the court in the Judgment. This is contrary to the longstanding principle of our law captured in the following *dicta*:

‘In the result I agree with the ultimate conclusion arrived at by Davis J, albeit for different reasons. This renders it unnecessary to decide on the correctness of his reasoning, since an appeal does not lie against the reasons for judgment but against the substantive order made by the court a quo...’¹ [underlining added]

¹ *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole* 2013 (5) SA 183 (SCA) [39], per Brand JA, relying on *Western Johannesburg Rent Board and Another v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A) at 354-355, per Centlivres JA. See also *President of the Republic of South Africa and Another v Tembani And Others* 2025 (2) SA 371 (CC) [73]-[74], per Rogers JA; *Absa Bank Ltd v Mkhize and Two Similar Cases* 2014 (5) SA 16 (SCA) [64] per Ponnann JA; *YG Properties Investments (Pty) Ltd v Ekurhuleni Metropolitan Municipality and Another (Leave to Appeal Application)* (2023/059368) [2024] ZAGPJHC 799 (13 August 2024) [4] per Movshovich AJ. See generally DE van Loggerenberg, *Erasmus: Superior Court Practice* (Jutastat e-publications, Revision Service 29, 2026) ('*Erasmus: Superior Court Practice*') RS 25, 2024, D1 Rule 49-10 and the authorities cited there.

[4] The above apparent shortcoming has not escaped the attention of the respondents. In their opposition of the Leave to Appeal they argue that the high-water mark of the applicant's case in the Leave to Appeal is the nit-picking at discrete conclusions contained in my reasoning in the Judgment, which approach overlooks the trite principle that an appeal lies against the order of the court below, and not its reasons.²

[5] The applicant's grounds for the intended appeal may be liberally summarised as follows:³

[5.1] The Court made an erroneous finding in paragraph 104 of the Judgment that the reasons for the attachment of several immovable properties and motor vehicles belonging to the applicant ('the Attachment') were the reasons set out in the letter authored by Bowman Gilfillan Inc Attorneys ('Bowmans') of 14 February 2022, as the respondents' attorneys ('the Reasons Letter').⁴

[5.2] The Court made another erroneous finding also in paragraph 104 of the Judgment. In this regard the Court is being criticised for its finding that there was sufficient explanation for the error in the Reasons Letter regarding the notice of 19 October 2021 by Mr Naidoo (as SARB's Deputy Governor) for the Attachment effected in terms of Regulation 22C of the Exchange Control Regulations⁵ ('the Attachment Notice').⁶

² *Ibid.*

³ Leave to Appeal par 7, CaseLines ('CL') 024-5 to 024-16.

⁴ Judgment par 104, CL 034 to 035.

⁵ The Exchange Control Regulations (henceforth 'the Regulations') were promulgated in terms of section 9 of the Currency and Exchanges Act 9 of 1933.

⁶ Judgment par 104, CL 034 to 035.

[5.3] The Court erroneously failed to consider the applicant's assertion that Mr Naidoo, at the time of making the Attachment, did not actually hold the required reasonable suspicion in terms of the Exchange Control Regulations ('the Regulations').

[5.4] The Court also made an error by not setting out reasons for the conclusion that the respondents' suspicion was reasonable.

[5.5] Even if the Court was correct that there was a reasonable basis for the Attachment, there was an error in its finding that the Attachment was permissible as this contradicted SARB's policy of non-imposition of penalties on persons who subsequently obtain approval for contravention of the Regulations.

[5.6] The contravention was less than R750 000 per annum (i.e. the single annual discretionary allowance which could be taken offshore by South African residents) and, therefore, the Court erred in finding that the Attachment was permissible under those circumstances.

[5.7] The Court erred in its failure to consider reasonableness of the respondents' suspicion regarding existence of 'a shortfall between the amount of money involved in a contravention and the amount forfeited to the State as required by regulation 22C'.⁷

[6] It is submitted on behalf of the applicant that on the basis of the errors asserted above, the intended appeal has reasonable prospect of success. Regarding the choice of the Supreme Court of Appeal ('the SCA') as the intended forum for the appeal, it is submitted that this matter raises issues of importance applicable to attachments warranting the attention of that superior court.

⁷ Leave to Appeal par 7, CL 024-13.

[7] The respondents dispute that there is merit in the applicant's grounds for the intended appeal. It is argued on their behalf that the Leave to Appeal falls short of what is primarily required to grant leave to appeal: reasons why the appeal has prospects of success. They, fittingly so, point out at the scarcity of judicial resources often severely stretched by appeals devoid of merit.⁸ The Leave to Appeal, in the respondents' view, advances several complaints of a factual nature, in an apparent attempt to re-litigate the issues advanced in the review proceedings already determined in terms of the Judgment. Be that as it may, the respondents argue that the grounds of appeal relied upon by the applicant fall beneath the raised bar now applicable to applications for leave to appeal under the Superior Courts Act 10 of 2013.

Applicable legal principles for applications for leave to appeal

[8] The legal principles - fundamental to determining applications for leave to appeal - are situated in section 17(1) of the Superior Courts Act 10 of 2013 ('Superior Courts Act'), which reads in the material part:

- (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 a 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 ...

[9] The Full Court of this Division in *Democratic Alliance v President of the Republic of South Africa and Others*⁹ made the following authoritative observations regarding the test for leave to appeal:

- [4] The test as now set out in s 17 constitutes a more formidable threshold over which an applicant must engage than was the case. Previously the test was whether there was a reasonable prospect that another court might come to a different conclusion... The fact that the Superior Courts Act now employs the word "would" as opposed to

⁸ *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others* 2013 (6) SA 520 (SCA) [24] per Wallis JA.

⁹ *Democratic Alliance v President of the Republic of South Africa and others* (21424/2020) [2020] ZAGPPHC 326 (29 July 2020), *coram*: Mlambo JP (as he then was), Davis JP and Molefe J (as she then was).

“might” serves to emphasise this point. As the Supreme Court of Appeal said in *Smith v S* 2012 (1) SACR 567 (SCA) at para 7:

‘More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must in other words be a sound, rational basis for the conclusion that there are prospects of success on appeal.’

[5] ...

[6] The second basis upon which leave should be granted is that there is a compelling reason, that is apart from the existence of conflicting judgments on the matter under consideration which require clarification from a higher court. In essence the compelling reason is whether the case raises issues of significant public importance.

[10] The Full Court, further, stressed that the threshold for granting leave to appeal against judgments of the High Court has been raised to a more formidable level in the Superior Courts Act.¹⁰ This holding, actually, is a descendant of a long line of cases since the decision of the Land Claims Court (now the Land Court) in *The Mont Chevaux Trust v Goosen and others*.¹¹

[11] These principles would pivot the discussion and findings to be made below. I use the essence of the above grounds of appeal as self-explanatory subheadings to facilitate the discussion of the material, put forward on behalf of the parties, for and against the granting of the Leave to Appeal. In some respects the grounds are discussed jointly.

Reasons for the Attachment were the reasons set out in the Reasons Letter

[12] The applicant disagrees with my finding in the Judgment that the Attachment was based on the same reasons as those set out in the Reasons Letter. The Reasons Letter, dated 14 February 2022, was authored by Bowmans on behalf of the respondents including Mr Naidoo, who executed the Attachment Notice almost four months earlier on 19 October 2021.

[13] In support of this ground, it is also submitted that my reasoning in the Judgment do not support the conclusion reached or the impugned finding. It is pointed out that the ‘question is

¹⁰ *Democratic Alliance v President of the Republic of South Africa* [2020] ZAGPPHC 326 [4].

¹¹ *The Mont Chevaux Trust v Goosen and others* 2014 JDR 2325 (LCC); (LCC14R/2014) [2014] ZALCC 20 (3 November 2014) [6], *per* Bertelsmann J.

not what facts existed when Mr Naidoo authored the Attachment Notice, but rather what facts he was aware of and relied on in taking the attachment decision he took'.¹² The following reflects the nub of the applicant's submissions in this regard:

[t]o accept that the Reasons Letter ... constitutes the reasons for taking of the decision is to conflate what Mr Naidoo told Bowmans his reasons were, with what his reasons actually were (which may or may not have been the same thing). Therefore the statement from Mr Naidoo that he took the decision for the reasons set out in the Reasons Letter was necessary, but he made no such statement in his affidavit.¹³

[14] The respondents say that the applicant is grousing at the wording used by Mr Malherbe, the fifth respondent, in the answering affidavit, and Mr Naidoo's confirmatory affidavit, but without success. Nothing is wrong with the words chosen or language used in the affidavits, the respondents contend, as in the answering affidavit Mr Malherbe states clearly the following:

[i]n terms of the "*reasons letter*" attached to the founding papers ..., the designated functionary had a reasonable suspicion that the Applicant is a person as contemplated in one or more paragraphs (i) to (iv) of Regulation 22C(1).¹⁴

[underlining added]

[15] Mr Naidoo's confirmatory affidavit did more than to simply confirm the content of Mr Malherbe's affidavit. It included the following:

[i]n particular I confirm that I took the decision to issue the attachment orders based on the reasonable suspicion which I had, informed by the facts set out by Mr Malherbe in his affidavit, that the applicant had engaged in and benefitted from contraventions of the exchange control Regulations.¹⁵

[underlining added]

[16] I still hold the view that Mr Naidoo confirmed the relevant facts. I agree with the respondents' view that this ground of appeal is more a criticism by the applicant of the choice

¹² Leave to Appeal pars 1.2.2 and 1.2.3, CL 024-6 to 024-7.

¹³ Leave to Appeal par 1.2.5, CL 024-7.

¹⁴ Answering affidavit ('AA') par 22.4, CL 005-11 to 005-12.

¹⁵ Confirmatory affidavit to the AA (deposed to by Mr Naidoo), par 1.4, CL 005-72.

of words used by the respondents and even the Court. It is an excellent example of elevating form over substance. Of paramount importance it constitutes a quibble at the reasoning in the Judgment rather than the substantive order therein, an approach disavowed by our courts.¹⁶ There is no merit in this ground for the intended appeal.

Sufficiency of the explanation for the error in the Reasons Letter regarding the Attachment Notice

[17] In this regard it is submitted on behalf of the applicant that I erred when I found that there was sufficient explanation in the Reasons Letter of the error in the Attachment Notice. In the Reasons Letter, Bowmans as the respondents' attorneys, accepted the fact that an attachment under Regulation 22C(1) relates to particular types of persons as opposed to particular goods and pointed out that the view to the contrary expressed by Mr Naidoo in the Attachment Notice was an inadvertent error. The applicant, similarly to the ground of appeal already rejected above, argue that there is no confirmation of this part of the Reasons Letter by Mr Naidoo. There is clearly confirmation and the explanation given is sufficient. There is no merit in this ground.

Mr Naidoo's lack of reasonable suspicion at the time of the Attachment and no reasons in the Judgment for the conclusion that the suspicion was reasonable

[18] The error claimed by the applicant to have been made by the Court in this regard is that the Court failed to consider the applicant's assertion that Mr Naidoo, at the time of making the attachment, did not actually hold the required reasonable suspicion in terms of the Regulations. This, it is submitted, is among others confirmed by the fact that the Court 'did not make any finding in regard to Mr Naidoo's lack of evidence as to the category of person which he thought the applicant fell into'.¹⁷ Another ground, which appears to be an expansion of the aforesaid,

¹⁶ Pars [3]-[4] above.

¹⁷ Leave to Appeal par 3.1, CL 024-9.

is that the Court made an error by not setting out reasons for the conclusion that the respondents' suspicion was reasonable.

[19] The respondents, on the other hand, associate with the finding by the Court that the decision-maker had reasonable grounds for the suspicions that informed the decisions made. The nit-picking approach, pivoting the applicant's grounds of appeal, regarding the facts that the applicant would have preferred the Court to have regard to, confirms a fatal misunderstanding of the durable distinction between reviews and appeals, namely, that appeals are concerned with the substantive correctness of the decision whereas reviews are concerned with the fairness and reasonableness of the process undertaken when making the decision.¹⁸

[20] I do not consider it warranted to repeat what I have said with regard to the grounds above and in the Judgment. I clearly do not consider these grounds to contribute anything towards the granting of the Leave to Appeal on the basis that the intended appeal 'would have a reasonable prospect of success' or there exists 'some other compelling reason' requiring that the appeal be heard.¹⁹

Attachment contradicted SARB's policy

[21] The applicant also seeks leave to appeal on the basis of an alleged error in the Court's finding that the Attachment was permissible when it contradicted the policy of SARB of not imposing penalties in respect of persons who subsequently obtain approval for contravention of the Regulations. But the applicant is not saying that he subsequently obtained approval for

¹⁸ *Erasmus: Superior Court Practice* RS 29, 2026, D1 Rule 53-2; RS 5, 2025, D-224. See also *Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd*; *Minister of Environmental Affairs and Tourism v Bato Star Fishing (Pty) Ltd* 2003 (6) SA 407 (SCA) [52]; *South Durban Community Environmental Alliance v MEC for Economic Development, Tourism and Environmental Affairs, KwaZulu-Natal Provincial Government and another* 2020 (4) SA 453 (SCA) [12]; *Cell C (Pty) Ltd v Commissioner, South African Revenue Service* 2022 (4) SA 183 (GP) [9].

¹⁹ Section 17(1)(a) of the Superior Courts Act, quoted in par [8] above.

contravening the Regulations and, therefore, wanted a favourable ruling in the abstract. I also do not find this ground meritorious.

Contravention was less than the single annual discretionary allowance of R750 000

[22] According to the applicant, because the contravention was less than R750 000 per annum, the single annual discretionary allowance which could be taken offshore by South African residents, the Court erred in finding that the Attachment is permissible under those circumstances.

[23] The respondents criticise this ground for lacking a legislative basis. In their view there is no basis for the legal argument that because the amount of the remuneration the applicant is said to have earned in contravention of the Regulations is less than the separate single annual discretionary allowance of R750 000 which could be taken offshore to cover travel, gifts, donations and maintenance payments during a year, the Court ought to have found that the Attachment was impermissible. They also point out that the submission constitutes new material surfacing in the Leave to Appeal, as the applicant did not raise same in the review. Further, the respondents consider the argument to contradict the applicant's own version that his remuneration related to funds paid to him by foreign entities in exchange for services rendered to them overseas in terms of a separate consultancy agreement. The impugned remuneration, according to the applicant, was not an offshore investment but offshore remuneration.

[24] I agree with the submissions on behalf of the respondents. The applicant's case has always been that he earned the remuneration abroad and not that he repatriated funds overseas. Therefore, this ground of appeal contradicts the applicant's case ruled upon in the Judgment. It will be dismissed.

Shortfall between the amount involved in the contravention and the forfeited amount

[25] The Court, according to the applicant, erred by failing to consider whether the respondents had reasonable basis for suspecting that there was ‘a shortfall between the amount of money involved in a contravention and the amount forfeited to the State as required by regulation 22C’.²⁰ And had the Court expressly considered the issue it would have, among others, appreciated that to know about the existence of a shortfall one ought to identify the amount for the contravention, a task which the respondents failed to discharge.

[26] I considered the applicant’s contentions in this regard. This included that according to the respondents the applicant’s claim that a shortfall ought to have been identified is unsustainable due to the absence of forfeiture. And that the amount for the applicant’s suspected contravention was to be considered as being around R4,7 billion.²¹ I also find this ground for the intended appeal to lack a reasonable prospect of success.

Conclusion

[27] I am of the opinion that leave to appeal should be refused. The applicant’s grounds of appeal - in the fullness of their nature and extent - do not suggest that the intended appeal would have a reasonable prospect of success or the existence of some other compelling reason for the appeal to be heard.²² The latter finding is also applicable to the applicant’s ground or argument that this matter raises issues of importance applicable to attachments, albeit that it was raised by the applicant when motivating the choice of the SCA, as the preferred forum for his appeal.

[28] Therefore, the Leave to Appeal would be dismissed with costs, including the costs of two counsel where employed, on Scale C. I find the latter cost order justified by the facts in the matter.

²⁰ Applicant’s application for Leave to Appeal par 7, CL 024-13.

²¹ Judgment pars [82]-[84], CL 0-28.

²² Section 17(1) of the Superior Courts Act, quoted in par [8] above.

Order

[29] In the premises, I make an order in the following terms:

- a) the application for leave to appeal is dismissed, and
- b) the applicant is liable for costs of the application, which costs shall include the costs of two counsel on scale C, wherever applicable.



Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : **13 February 2026**
Date of Judgment : **13 May 2026**

Appearances :
For the Applicant : Mr P Ginsburg SC and Mr KD Iles
Instructed by : Polson Law Practice, Pretoria

For the Respondents : Mr M Stubbs (with Mr NGD Maritz SC
on the heads of argument)
Instructed by : Bowman Gilfillan Inc, Cape Town
c/o Bowman Gilfillan Inc, Pretoria