

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
HELD AT PRETORIA**

CASE NO: 32482/2020

DOH: 25 March 2026

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

[Redacted Signature]

SIGNATURE

29 April 2026
DATE

In the matter between:

ABEGAIL NTOMBIKHONA BOIKHUTSO

Applicant

And

PGC GROUP (PTY) LTD

First Respondent

**WORKERSLIFE MANAGEMENT
SERVICES (PTY) LTD**

Second Respondent

PGC INVESMENT HOLDINGS (PTY) LTD Third Respondent

WORKERS LIFE DIRECT (PTY) LTD Fourth Respondent

In re:

PGC GROUP (PTY) LTD First Plaintiff

**WORKERSLIFE MANAGEMENT
SERVICES (PTY) LTD** Second Plaintiff

PGC INVESTMENT HOLDINGS (PTY) LTD Third Plaintiff

WORKERSLIFE DIRECT (PTY) LTD Fourth Plaintiff

And

ZWILENKOSI REUBEN MDLETSHI First Defendant

ABEGAIL NTOMBIKHONA BOIKHUTSO Second Defendant

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 29 April 2026.

ORDER

The following order is granted:

1. Leave to appeal is granted to the Full Court of this Division only in respect of quantum of security for costs.
2. Costs will be costs in the appeal.

JUDGMENT

Bam J

Introduction

1. This is an application for leave to appeal the judgment and order of this court of 8 September 2025. That order upheld the applicant's application for security for costs, in the amount of R2 000 000. The application of leave to appeal is opposed by the applicant. Prior to considering the respondents' grounds, it is useful to first canvass the legal principles governing applications for leave to appeal.

Relevant legal principles

2. Legislative provision for applications for leave to appeal is found in Section 17 (1) (a) of the Superior Courts Act¹ and it reads:

'Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

 - (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;'
3. Our Senior Courts have on numerous occasions expressed themselves on the meaning of the provision. In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*, it was said that:

¹ Act 10 of 2013.

'[An] applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.'²

4. In *MEC for Health, Eastern Cape v Mkhitha and Another*, it was said that:

'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.'³

5. In *Mothuloe Incorporated Attorneys v Law Society of the Northern Province and Another*, the court stated that,

'The test is simply whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or a mere possibility of success.'⁴

Respondents' grounds of appeal: Ground 1: The court's failure to consider the issue of delay

6. Firstly, the respondents cite the issue of delay and record that the request for security was delivered on 29 September 2023, long after the pleadings closed. They state that they had raised the issue in their answering affidavit and the

² (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020), paragraph 2.

³ (1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 17.

⁴ (213/16) [2017] ZASCA 17 (22 March 2017), paragraph 18.

applicant failed to deal with it in her replying affidavit. Thus, in failing to mention the point in its judgment, this court failed to take the issue into account in making its decision. I disagree that I failed to take the issue into account. It is by now settled that a judgment need not deal with all the issues raised by the parties. Importantly though, the Constitutional Court in *Giddey NO v JC Barnard and Partners*⁵, has long expressed its support for the *ratio* in *Bookworks (Pty) Ltd v Greater Johannesburg, Transitional Metropolitan Council and O*⁶, that an order for security may be made at any stage of the proceedings, and thus, in *media res*. The ground lacks merit.

Ground 2: The court's finding that the particulars of claim disclose no cause of action

7. The respondents contend that I erred in finding that their particulars of claim disclosed no cause of action. They submit that:
- (i) Their particulars disclose a cause of action.
 - (ii) Sufficient allegations are pleaded in respect of breach of fiduciary duties and damages.
 - (iii) The claims are based on the alleged status of the applicant as a director, the fiduciary duties allegedly owed in terms of the common law and Section 76(2) and (3) of the Companies act, and alleged intentional wrongful and unlawful conduct. They add that these claims are *sui generis*, delictual or statutory based.

⁵ (CCT65/05) [2006] ZACC 13; 2007 (5) SA 525 (CC); 2007 (2) BCLR 125 (CC) (1 September 2006), paragraph 20.

⁶ 1999(4) SA 709 @ 807H.

- (iv) The conduct is apparent *ex facie* the particulars of claim, alternatively to be established at trial.
 - (v) If proven at trial, the conduct would constitute a breach of fiduciary duties and entitle the respondents to damages; and
 - (vi) All the elements of a *sui generis* claim, delictual claim, or statutory claim were pleaded.
8. I refer to my reasoning as set out in the judgment. I see no need to repeat same. I point out that the respondents' submissions, far from pointing out the respects in which the court erred, simply repeat what is in their particulars of claim and what the court should have found. As such, the respondents fail to engage with the reasoning in the judgment. The ground lacks merit.

Ground 3: The court's finding on the issue of joinder

9. The respondents submit that I erred in upholding the joinder point raised by the applicant, particularly in circumstances where the applicant had laid no basis for the joinder of the individuals mentioned in her founding affidavit. They state, *inter alia*, that:
- i) The persons the applicant seeks to join are set out in the seventh, eighth, and ninth special pleas to the applicants' notice of amendment.
 - ii) The respondents objected to the proposed amendment.
 - iii) The refusal to join was warranted.
 - iv) In light of the contents of the notice of objection and heads of argument in the application for leave to amend, the refusal to join certain parties is warranted.

- v) The respondents were *bona fide* in their view that there was no need to join the parties.

10. The respondents' submissions appear to me to justify why they refused to join the parties. Thus, the respondents, instead of attacking the reasoning in the judgment, are rehashing their case. I find no merit in this ground of appeal.

Ground 4: The court's exercise of its discretion

11. In this ground, the respondents submit that, in light of the points raised in their Notice of Application for Leave to Appeal, this court failed to exercise its discretion judicially and or, the court reached a decision which could not have been reached by a court properly directing itself to the relevant facts. The respondents further contend that the court, in so far as it found that their action against the applicant was vexatious and frivolous, failed to exercise its discretion judiciously. I find it difficult to entertain this ground as it is merely a conclusion reached by the respondents.

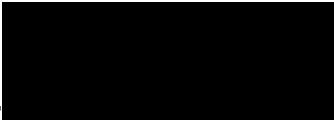
Ground 5: Quantum of security for costs

12. The respondents submit that the court erred in setting the amount of security at R2 million rand. They say the applicant had not justified the amount and, in the event security had to be furnished, which they deny, the quantum had to be set by the Registrar.

13. On this ground, I am persuaded that another court would come to a different finding. It follows that leave to appeal must be granted only in respect of this ground.

Order

1. Leave to appeal is granted to the Full Court of this Division only in respect of quantum of security for costs.
2. Costs will be costs in the appeal.



BAM J

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

Date of Hearing:

25 March 2026

Date of Judgment:

29 April 2026

Appearances:

Counsel for the Appellant:

Adv P Mbana

Instructed by:

Fenyane and Associates Inc
c/o TIDK Incorporated, Centurion
Mall, Centurion, Gauteng

Counsel for the Respondent:

Adv L Hollander

Instructed by:

LDA Incorporated

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Brooklyn, Pretoria