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: 29 May 2026 [redacted]

Case 2026/017521

In the matter between:

NATHANIEL TSAKANE MAKHUBELE	Applicant
and	
RONALD TSAKANE MABUNDA	First Respondent
MHLAVE INVESTMENTS HOLDINGS (PTY) LTD	Second Respondent
SHERIFF OF THE HIGH COURT - SOWETO WEST (MAUREEN CIBE)	Third Respondent
SHERIFF OF THE HIGH COURT - WESTONARIA	Fourth Respondent

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] This is a leave to appeal against my judgment delivered on 1 April 2026[1], where I dismissed an urgent application brought by the applicant in which he sought, in substance, a declaratory order that an interim order granted by Mia J on 13 February 2026 was suspended pending an appeal, and that earlier orders granted by Tebeile AJ and Wanless J remained operative and enforceable. The applicant also sought substantive relief in the enforcement of the orders of Tebeile AJ and Wanless J.

[2] I found that there was no pending leave to appeal against the Mia J order, as the application had been rejected by the Court Online system for non-compliance with the Rules. I further found that, even if there had been, the Mia order was an interlocutory order establishing a case-management regime and was therefore not automatically suspended under section 18 of the Superior Courts Act.[2] I also held that section 18 could not be used as a vehicle to obtain entirely new substantive relief such as eviction orders and monetary claims.

[3] The third respondent also brought a counter-application which I granted, and thereby declared the applicant a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act[3] and imposed procedural controls requiring him to obtain written leave from the office of the Judge President before enrolling any new application or interlocutory step in this Division. I awarded costs to the third respondent on the attorney-and-client scale.

[4] The application for leave was not without procedural difficulty: the record disclosed non-compliance with the Uniform Rules and the applicable practice directives. I nonetheless address the merits in the interests of finality.

[5] When the application for leave was heard, the applicant again appeared in person. The third respondent was also present with legal representation. The first and second respondents did not appear, but Mr Mabunda (the first respondent) joined the

[1] *Makhubele v Mabunda* [2026] ZAGPJHC 404.

[2] 10 of 2013.

[3] 3 of 1956.

virtual hearing. The first and second respondents filed heads of argument. Those heads were read but did not materially assist in resolving the questions arising for determination, as they did not engage with the central issues on the merits. They are accordingly not addressed in detail in this judgment.

[6] The applicant's written and oral submissions raised numerous complaints and alleged irregularities, many of which were repetitive and internally inconsistent. They were often difficult to follow and did not present a structured challenge to the reasoning of the main judgment. In this judgment I therefore do not attempt to deal with every point he has raised, but confine myself to the main aspects that can properly be understood as grounds of appeal against the orders I made.

[7] The applicant advances five grounds of appeal:

a. That I erred in finding that there was no properly pending application for leave to appeal against the order of Mia J and in treating that order as interlocutory for purposes of section 18 of the Superior Courts Act, with the result (he says) that the Mia order ought to have been regarded as suspended and the earlier orders of Tebeile AJ and Wanless J as fully operative.
b. That I failed to give effect to, or undermined, the extant orders of Tebeile AJ and Wanless J, thereby (according to the applicant) failing to uphold the rule of law and his rights as owner of the property.
c. That I misdirected myself in declaring him a vexatious litigant under section 2(1)(b) of the Vexatious Proceedings Act and in imposing Division-wide procedural controls, including by allegedly not following the approach set out in authorities.
d. That the third respondent's counter-application was procedurally defective and/or not properly before the court, and that I afforded the third respondent procedural indulgences and allowed her to participate in circumstances that rendered the proceedings unfair to the applicant.
e. That the award of costs on the scale as between attorney and client in favour of the third respondent constituted a misdirection and was, on his

version, tainted by the dismissal of the recusal application and by the alleged failure to consider all relevant authorities.

[8] For the reasons set out below, I am satisfied that the application for leave to appeal must be refused. The applicant has not demonstrated reasonable prospects of success on any of the five grounds advanced, nor has he identified any compelling reason of public importance or legal novelty that would warrant the grant of leave to appeal.

[9] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave may only be given where the court is of the opinion that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why it should be heard. As explained in *MEC for Health, Eastern Cape v Mkhitha*[4], a mere possibility of success, an arguable case, or a matter that is not hopeless is not enough. There must be a sound, rational basis for the conclusion that another court could reasonably arrive at a different outcome on the facts and the law. Against this standard, the applicant's five grounds of appeal must be assessed.

Ground 1: Section 18 and the Mia J order

[10] I found that, as a matter of fact, the applicant's leave application was rejected by the Court Online system for non-compliance with the Rules, and that he did not cure the defect. On the material before me, there was no properly pending leave application. There is no realistic prospect of success.

[11] I also found that, in any event, Mia J's order was interim, pending the final determination of the application and the counter-application she consolidated. Her order did not finally determine the parties' substantive rights to the property. The order referred the matters for case management, directed rescission proceedings, and created interim arrangements pending those proceedings. This means that even if there were an appeal, the order would not be suspended. There is no reasonable prospect that another court would differ.

[4] [2016] ZASCA 176 para 17,

Ground 2: Failure to enforce earlier orders

[12] The second ground is that I failed to give effect to the order of Tebeile AJ and Wanless J, and thereby undermined the rule of law.

[13] This mischaracterises the judgment. The refusal must be understood in the context of multiple orders, one of which was Mia J's order that expressly regulated the position pending case management and rescission proceedings. What Mr Makhubele requested was that that order be ignored, despite its existence.

[14] Court orders must be obeyed, and a litigant cannot insist that only favourable orders be enforced while disregarding unfavourable ones, such as the order of Mia J. My judgment required compliance with the Mia J order and the framework it established. There is no reasonable prospect that another court would hold that the earlier orders of Tebeile AJ and Wanless J must be enforced at the expense of a later Mia J order regulating an interim process involving those two orders. Also on this ground, there is no reasonable prospects of success on appeal.

Ground 3: Vexatious litigant declaration

[15] The third ground challenges the finding that the applicant is a vexatious litigant and the procedural controls imposed under section 2(1)(b) of the Vexatious Proceedings Act.[5]

[16] The record shows he has a history of making repeated urgent applications and other behaviours, which I discussed in the main judgment. These proceedings are part of that pattern, as they aim to reopen issues despite an existing interdict and case-management order that put them on hold until the disputes are finally determined.

[17] In assessing whether the applicant's conduct satisfies section 2(1)(b), it is relevant that his litigation has not been confined to a single misjudged application but has followed a sustained pattern. Over the years, the applicant has repeatedly sought

[5] 3 of 1956.

to reopen disputes concerning the same property and related parties (under different case numbers), including prior proceedings in Pretoria in which he has already been declared a vexatious litigant. More recently, he has launched multiple urgent applications arising from the same underlying dispute, sought contempt findings and the Sheriff's incarceration, brought a spoliation-related counter-application, pursued leave to appeal and section 18 relief against an interim order, and sought to have judges against whom he has lodged complaints recused. These steps were often accompanied by criminal and professional complaints against opposing parties and their legal representatives, and were taken notwithstanding existing orders regulating how the disputes were to be managed. Taken together, this history demonstrates persistent and unwarranted resort to the courts, which burdens other litigants and the administration of justice. On that basis, the vexatious litigant order and the associated procedural controls were granted.

[18] The applicant argued that I failed to comply with the approach outlined in *Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga*.[6] That submission is unfounded. In the main judgment I did what Maphanga requires: I identified the statutory source of the power (section 21(b) of the Vexatious Proceedings Act), I considered the litigant's broader litigation history and not only the present case, I distinguished between mere persistence and abuse, and I fashioned a remedy that is tailored and proportionate, namely a screening mechanism requiring prior leave to institute further proceedings, rather than an absolute bar. The order does not prevent the applicant from accessing the courts, but it does regulate how and when he may do so, in line with the constitutional approach endorsed in *Beinash v Ernst & Young*[7] and applied in *Maphanga*. There is no basis to suggest that the wrong test was applied, or that my discretion was exercised on a wrong principle.

[19] The conduct described in the main judgment and summarised above is not just repetitive. In my opinion, based on the record, it is improper and disrespectful, and disruptive of the proper functioning of the court and its officers. Court procedures and

[6] 2021 (4) SA 131 (SCA).

[7] 1999 (2) SA 116 (CC) para 15.

complaint mechanisms, which exist to ensure fair dispute resolution and uphold judicial integrity, are often misused against parties, judicial officers, and staff, rather than serving their intended purpose. The issue is not with these mechanisms being used, but with their improper invocation in this matter.

[20] Whether a litigant's conduct meets the statutory threshold is a value judgment grounded in the evidence. On the facts found in the main judgment, there is no sound basis on which another court would interfere with the declaration and the associated procedural controls.

Ground 4: Alleged procedural unfairness

[21] The fourth ground is that the counter-application was not properly before the court, urgency was not established, and the third respondent was afforded procedural indulgence.

[22] The counter-application was filed in the very proceedings the applicant had chosen to bring urgently. It was therefore properly ventilated at the same hearing; no separate enrolment was required. The third respondent placed an affidavit before the court in support of her counter-application. The applicant had full notice of the case he had to meet. He argued at length in person. There is nothing on the record to suggest that he was taken by surprise or deprived of a fair opportunity to be heard.

[23] These are, again, essentially factual and discretionary issues. There is no realistic prospect that another court would find that I committed a material irregularity that would justify interference on appeal.

Ground 5: costs

[24] The fifth ground concerns the costs order on the attorney-and-client scale.

[25] A punitive costs order remains a discretion to be exercised judicially. In the main judgment, I identified the factors that cumulatively justified such an order: the abusive character of the proceedings; the attempt to obtain substantive relief under section 18;

the disregard of an existing interdict and case management order; and the broader pattern of conduct already recognised in previous litigation.

[26] This conduct warrants attorney-and-client costs, both to compensate the innocent party and to mark the court's disapproval of abuse of process. There is no indication that I took irrelevant considerations into account, omitted relevant ones, or misdirected myself on principle. In those circumstances, an appellate court will be slow to interfere. There is no reasonable prospect that another court would differ.

Other issues raised

[27] The applicant also sought to rely, in support of his grounds, on the fact that he had brought a recusal application against me and filed a complaint with the Judicial Service Commission. The recusal application was dismissed in the main judgment, where I applied the well-known objective test for a reasonable apprehension of bias. Nothing advanced in the present application for leave discloses any misdirection in that reasoning or any new fact that could alter the outcome. There is no reasonable prospect that another court would differ.

Compelling reasons

[28] Once it is accepted that there are no reasonable prospects of success on the merits of any ground, the remaining question is whether there is nonetheless some compelling reason to grant leave, for example because the matter raises a novel question of law or an issue of wider public importance.

[29] This application does not do so. It turns on the application of settled principles to the particular facts of this case. It does not present a legal question that needs clarification by an appellate court.

Conclusion

[30] In sum, none of the grounds advanced discloses a reasonable prospect that another court would come to a different conclusion. The application for leave to appeal must therefore be refused. There is no reason to depart from the usual principle that costs follow the result

Order

[31] The following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay the third respondent's costs of this application.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division, Johannesburg

Date of hearing:	25 May 2026
Date of judgment:	29 May 2026
For the applicant:	In person
For the respondent:	L C M Morland instructed by Warrener de Agrela and Associates