

REPUBLIC OF SOUTH AFRICA



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

DELETE WHICHEVER IS NOT APPLICABLE:

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES YES/NO

(3) REVISED:



DATE: 22 May 2026 SIGNATURE:

CASE NR: 2016-131543

In the matter between:

JSM

APPLICANT

and

SRM

FIRST RESPONDENT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 22 May 2026

JUDGMENT

MARUMOAGAE AJ

1. This is an opposed application for leave to appeal against the judgment and order granted on 10 September 2025. This application is brought on the basis that the appeal would have a reasonable prospect of success.¹
2. On 10 September 2025, the Applicant was found to be in contempt of the interim maintenance order granted by Mokose J. The matter was referred to the maintenance court to, among others, assess the Applicant's ability to contribute towards the Respondent's maintenance because the Applicant claimed to lack the financial means to meet the Respondent's maintenance needs.
3. The Respondent was ordered to initiate the maintenance proceedings within 30 days of the order sought to be appealed against. It was further ordered that should the Applicant fail to institute the maintenance proceedings, the Respondent could approach this court to enforce the contempt of court order. The Applicant failed to institute the maintenance proceedings as ordered. Instead, he changed his attorneys and instituted an application for leave to appeal.
4. Various factors have been raised in support of this application. There is no need to state all the grounds in detail. It suffices to record that the allegations at the heart of this application are that the court misapplied the test for civil contempt, failed to consider relevant evidence, made findings that were unsupported by the evidence in the record, and exercised its discretion based on incorrect principles.

¹ Section 17(1)(a)(i) of the Superior Courts Act.

5. To succeed with the ground relied upon, the judge who granted an order must be on an opinion that the appeal would have a reasonable prospect of success.² It cannot be denied that there is always a possibility that a different judge can reach a different conclusion. However, that is not the test. The test is a subjective view of the judge who granted an order sought to be appealed against whether the appeal would have a reasonable prospect of success, and not 'may' or 'could' have a reasonable prospect of success. In *MEC for Health, Eastern Cape v Mkhitha and Another*, the SCA held that '*... leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success*'.³
6. In *MEC for Health, Eastern Cape v Mkhitha and Another*, the Supreme Court of Appeal authoritatively stated that:

'[a]n 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'.⁴

7. It was argued on behalf of the Applicant that in making the contempt order, the court failed to adequately assess the bank statements placed before it and the various income challenges experienced by the Applicant, as well as the payment efforts he made towards the required maintenance.
8. At the start of the hearing, counsel for the Applicant was asked by the court whether it was necessary to bring this application, having regard to the way the order in the main contempt proceedings was crafted. While counsel insisted that it was necessary, it appears that there was a serious lack of appreciation of the way in which the orders were crafted.
9. The parties in this matter are two elderly people who should be enjoying life apart from each other since they no longer wish to be together. Instead, they are

² Section 17(1)(a)(i) of the Superior Courts Act.

³ (1221/2015) [2016] ZASCA 176 (25 November 2016) para 16.

⁴ Ibid para 17.

spending much of their time in court dealing with various applications against each other. The contempt order empowered the Applicant to approach the maintenance court for a proper inquiry to be made to determine whether he has the means to honour his maintenance obligations towards the Respondent.

10. The maintenance court (situated at the magistrate's court with jurisdiction) is better situated to conduct this inquiry. However, the Applicant has failed to comply with the order that required him to institute the maintenance proceedings at the maintenance court within the prescribed time.
11. During the hearing, the court was informed that the Applicant desires to approach the High Court to vary the 10 September 2025 order. It is surprising that the Applicant has the financial means to litigate in the High Court but claims to lack the financial means to contribute toward the Respondent's maintenance. The contemplated application is not only ill-advised, but it is also unnecessary, having regard to the way in which the order contemplated to be varied is worded.
12. In this order, while the Applicant was found in contempt, he was given an opportunity to avoid the consequences of the contempt order by submitting to a maintenance inquiry to determine his alleged lack of means. The most effective way to avoid enforcement of the contempt order was to initiate a maintenance inquiry so that he could provide evidence to substantiate his claim of lack of means. The fact that he failed to do so and is now contemplating instituting another high court litigation may indicate that he does not want to disclose his true financial position.
13. There is no merit in any of the factors raised on behalf of the Applicant in support of this application. The Applicant is a businessman who owns several assets and has not been consistent in paying maintenance to the Respondent. At this stage, the Applicant cannot merely say he cannot afford to pay; it is important that there is a proper maintenance inquiry to establish the Applicant's alleged lack of means. I am of the view that there is no reasonable prospect of success on appeal and the application must be dismissed.

14. It is not in the interest of any of the parties to be continuously embroiled in High Court litigation. It is also unfair to the Respondent to be continuously forced to fight to receive the entitled maintenance and incur legal costs while doing so. For this reason, costs must follow the cause.

ORDER

15. In the result, I make the following order:

13.1. Application for leave to appeal is dismissed.

13.2. The Applicant is ordered to pay the costs of this application, including the costs of one counsel at scale B.

C MARUMOAGAE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

COUNSEL FOR THE APPLICANT : Adv N Terblanche

INSTRUCTED BY : Rathidili Attorneys Inc

COUNSEL FOR THE RESPONDENT : Mr Matlala

INSTRUCTED BY : Matlala & Associates

DATE OF THE HEARING : 20 April 2026

DATE OF JUDGMENT : 22 May 2026