



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	
DATE : 27 May 2026	SIGNATURE

CASE NO: 13990/15

HEARD ON: 26 May 2026
JUDGMENT: 27 May 2026

In the matter of:

GERT SAIMAN

APPELLANT (DEFENDANT A QUO)

AND

IZAK KIRSTEN

RESPONDENT (PLAINTIFF A QUO)

JUDGMENT ON LEAVE TO APPEAL

Strijdom, J

1. In this matter the applicant applies for leave to appeal to the Supreme Court of Appeal, alternatively, to a full Court, of this division, against the whole of my judgment and order handed down on 22 April 2026.
2. The application for leave to appeal is opposed by the respondent.

3. The grounds of appeal are set out in the application for leave to appeal.
4. The test on leave to appeal is not whether this court erred in its reasoning, but whether an appeal court would come to a different conclusion and would thus give a different order.¹ Here again, the fundamental point of departure is that an appeal lies against an order and not the reasons.²
5. To succeed in this application, the applicant must convince the Court that the requirements of section 17(1) of the Superior Courts Act; Act 10 of 2013 (" the Act") are satisfied. These requirements are :
 - 5.1. First, there is a reasonable prospect of success on appeal;
 - 5.2. Secondly, there is some other compelling reason why the appeal should be heard.
 - 5.3. Thirdly, the appeal does not fall within the ambit of section (16)(2)(a)- section 17(1)(b); and
 - 5.4. Fourthly, the decision sought to be appealed does not dispose of all the issues in the case – section 17(1)(c)
6. An applicant for leave to appeal must convince the court that, on a sound, rational basis, its prospects of success on appeal are not remote but have a reasonable and realistic chance of succeeding. Equally, a mere possibility of success on appeal is not enough.³

¹ *Four Wheel Drive Accessory Distributors CC v Rattan NO* 2019 (3) SA 451 at [34]

² *South African Reserve Bank v Khumalo and Another* 2010 (5) SA 449 (SCA) ([2011]) ALL SA 26; [2010] ZA SCA 53 para 4

³ See *Kingfisher Fuels CC v BP Southern Afrika (Pty) Ltd and Another* 2025 JDR 1544 (GT) para 46 page 12

7. In respect of all the grounds of appeal raised by the applicant, my judgment deals with the facts and the law as presented by the parties and how the court arrived at each conclusion on the contentions raised by the parties.
8. It is trite that the powers of a court of appeal against factual findings are limited. There must be demonstrable and material misdirection by the trial court before a court of appeal will interfere.⁴
9. When the facts and the law were examined there is in my view no sound and rational basis for the conclusion that the appeal would have a reasonable prospect of success.
10. I am also of the view that there are no compelling reasons why the appeal should be heard.
11. In the result, the application for leave to appeal is dismissed with costs on party and party scale. Costs are to be taxed in accordance with Scale B.


Strijdom JJ
Judge of the High Court, South Africa
Gauteng Division, Pretoria

⁴ See *S v Hadebe and Others* 1997 (2) SACR, 641 (SCA) and *SAHRC v Masuku* 2022 (4) SA 1 (CC)

Representatives:

For the applicant: adv JC Kotze

Instructed by: Kotze and Roux Inc

For the Respondent: Adv. J Prinsloo

Instructed by: PJ Strydom attorneys