

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2026-111753

(1)	REPORTABLE	NO
(2)	OF INTEREST TO OTHER JUDGES:	NO
(3)	REVISED:	YES
DATE		SIGNATURE
05/06/2026		[Redacted Signature]

In the matter between:

KABITSANE LETSIE

Applicant

AND

NATIONAL HOUSING FINANCE CORPORATION

Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

FURMAN AJ

INTRODUCTION

[1] This is an application by the respondents for leave to appeal against the judgment and order granted by this Court on 28 May 2026.

[2] The judgment concerned Part A of an urgent application. The relief granted was interim in nature and was expressly made operative pending the final determination of Part B, being the review proceedings. The costs of Part A were reserved for determination in Part B.

[3] The respondents seek leave to appeal on three broad grounds. First, they contend that this Court misdirected itself in relation to the jurisdictional enquiry and in its treatment of Famous Idea Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme and Others. Secondly, they contend that this Court failed properly to apply the test for interim interdictory relief, particularly the requirement that the applicant demonstrate reasonable prospects of success in the review. Thirdly, they contend that paragraph 4 of the order, which restrained the permanent filling of the position of General Manager: Programme Management pending Part B, was not relief sought in the notice of motion and ought not to have been granted.

[4] The threshold for leave to appeal is set by section 17(1)(a) of the Superior Courts Act 10 of 2013. Leave may be granted only 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 the appeal should be heard.

[5] Before considering the merits of the grounds advanced, it is necessary to consider whether the order is appealable. The order granted by this Court is not final in effect. It does not dispose of Part B. It does not finally determine the lawfulness of the impugned decision. It does not finally determine whether the applicant was lawfully appointed to, or lawfully removed from, the position of General Manager: Programme Management.

[6] The order preserves the position pending the determination of Part B. It is in substance and form, interim and preservative. The review court remains at large to determine the merits of the review and the ultimate lawfulness of the impugned decision. Nothing in the judgment precludes the respondents from advancing those points fully in Part B.

[7] The respondents' application for leave to appeal proceeds, in material respects, from a misconception of the judgment. The Court did not decline to consider jurisdiction. It considered

the respondents' jurisdictional objection at the outset and was satisfied, on the applicant's pleaded case and for purposes of Part A, that the applicant had established a prima facie basis upon which this Court's review/legality jurisdiction was engaged.

[8] The Court was alive to the respondents' reliance on Famous Idea. It accepted that a court whose review jurisdiction is contested must consider that issue before granting relief. That is what the Court did. Famous Idea does not, however, require a court, in urgent Part A proceedings for interim and preservative relief, to determine finally and conclusively every jurisdictional question that may arise in the review. It requires the Court to consider whether its review jurisdiction is properly engaged before exercising powers that depend upon that jurisdiction. That enquiry was undertaken. On the pleaded case, and on the material then before the Court, the applicant had established at least a prima facie basis for contending that the impugned decision involved the exercise of public power by an organ of state and was susceptible to review under PAJA and/or the principle of legality. Whether that contention ultimately succeeds is a matter for Part B, on the full record.

[9] In reaching that conclusion, the Court had regard to the pleaded case and to the manner in which the respondents themselves justified the impugned decision by reference to statutory and constitutional obligations. The dispute could therefore not simply be dismissed, at the Part A stage, as an ordinary employment dispute incapable of engaging this Court's review/legality jurisdiction.

[10] In my view, the jurisdictional complaint does not render the order appealable. The order is interim and preservative. A final jurisdictional determination, adverse to the applicant, may yet be made in Part B once the record and the full review papers are before the Court. The interim order does not foreclose that enquiry. In any event, even if the order were appealable, I am not persuaded that the respondents enjoy reasonable prospects of success on the jurisdictional ground.

[11] The second ground concerns the requirements for interim interdictory relief. The respondents contend that this Court failed to apply the standard articulated in *Economic Freedom Fighters v Gordhan*. I do not agree.

[12] The judgment considered the prima facie merits of the applicant's case. It referred to the applicant's reliance on *Oudekraal Estates (Pty) Ltd v City of Cape Town and MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd*. It considered the fact that the applicant had occupied the position of General Manager: Programme Management for an extended period, performed the functions associated with that office, received the remuneration attached thereto and participated at executive level. It also considered that the respondents' own correspondence included references to the applicant's "demotion" and reassignment to her previous position.

[13] The Court concluded that the applicant had established a prima facie right, albeit one open to some doubt. That is the conventional standard applicable to interim interdictory relief. The Court did not purport to decide the review finally. It considered whether the applicant had shown sufficient prospects at the interim stage to justify preservation of the status quo pending Part B. I remain of the view that the applicant did so.

[14] The respondents' criticism is in truth a disagreement with the weight attached to the material before the Court and with the exercise of the Court's discretion. That does not, without more, establish reasonable prospects that another court would interfere with an interim discretionary order.

[15] The third ground concerns paragraph 4 of the order, which restrains the respondents from permanently filling the position of General Manager: Programme Management pending the final determination of Part B.

[16] Paragraph 4 is ancillary to the interim relief granted. Its purpose is to preserve the efficacy of Part B. If the post were permanently filled before the review is determined, the review relief may be rendered substantially less effective or practically difficult to implement. The restraint is temporary. It operates only pending Part B. It does not determine who must permanently occupy the position and it does not prevent the respondents from advancing all their arguments in the review.

[17] That conclusion is reinforced by the factual history placed before the Court. On the applicant's pleaded case, she had initially performed the functions of General Manager: Programme Management in an acting capacity for a period before her permanent appointment. The respondents were therefore not strangers to the position being occupied or managed on an acting or temporary basis. Paragraph 4 of the order does not compel the respondents to appoint the applicant permanently, nor does it prevent them from making appropriate temporary administrative arrangements pending Part B. It merely restrains the permanent filling of the position so that the review relief, if ultimately granted, is not rendered hollow or practically incapable of effective implementation.

[18] The respondents' complaint also overlooks that the notice of motion sought further and/or alternative relief. Paragraph 4 was not a determination of a new or unpleaded dispute. It was directed at preserving the subject matter of Part B and preventing the review relief from being rendered nugatory. The position of General Manager: Programme Management, the applicant's alleged demotion, her status, remuneration and the consequences of the continued implementation of the impugned decision were squarely before the Court.

[19] In granting interim relief, the Court exercises a discretion as to the form of the order, provided the relief remains tethered to the pleaded case and does not occasion procedural unfairness. Paragraph 4 falls within that discretion. It is temporary, preservatory and logically connected to the relief sought in Part A. It does not finally confer the position on the applicant, nor does it finally deprive the respondents of the power to fill the position after Part B has been determined.

[20] The respondents have also not shown any compelling reason why the appeal should be heard. The matter is still to proceed to Part B, where the substantive issues can be determined on a fuller record. An appeal at this stage would fragment the proceedings and delay the determination of the review. The interests of justice do not favour an immediate appeal against an interim order whose purpose is to preserve the position pending that determination.

[21] I accordingly find that the order is not appealable. In any event, and even if it were appealable, I am not satisfied that the respondents have shown reasonable prospects of success or any other compelling reason for the appeal to be heard.

[22] The application for leave to appeal must therefore fail.

ORDER

[23] The following order is made:

1. The application for leave to appeal is dismissed.
2. The costs of the application for leave to appeal are reserved for determination in Part B.



FURMAN AJ
Acting Judge of the High Court

Appearances

On behalf of the Applicant: MUSATONDWA MUSANDIWA

Instructed by: TRACEY LOMAX ATTORNEYS

On behalf of the Respondent: M MANALA

Instructed by: MAKHUBELA ATTORNEYS

Date of hearing: 04 June 2026

Date of Judgement: 05 June 2026