IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case No: **2025-203958**

In the matter between:

SEAN PHILLIPS Applicant

and

MATHEW GRIMBEECK Respondent

Neutral citation: *Phillips v Grimbeek* Case No 2025-203958 [2026] ZAWCHC (29-05-2026)

Coram : **MAPOMA, AJ**
Heard : 25 March 2026
Judgment : 29 May 2026

Summary : *Leave to appeal – section 17(1)(a)(i) - test for leave to be granted* **-** *final interdict – against defamatory publication - requirements met – dispute of fact – whether Plascon- Evans principle applied*

ORDER

1. The respondent's application for leave to appeal is dismissed.

2. The respondent shall pay the applicant's costs, including counsel's costs on Scale B of the High Court scale.

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

MAPOMA, AJ

Introduction

[1] This is an opposed application for leave to appeal against the judgment and order granted by this Court against the respondent on 25 November 2025 in an opposed application for interdict that was brought on an urgent basis in terms of rule 6 (12) of the Uniform Rules of this court. For the sake of convenience, the Court will refer to the parties as they were cited in the main interdictory relief application.

[2] In summary, the applicant sought the following reliefs:

> "1. That the forms and service provided for in the Uniform Rules of Court be dispensed with and that this matter be heard as one of agency in terms of Rule 6(12) of the Uniform Rules of Court.
>
> 2. The respondent be interdicted and restrained from:

2.1 Publishing, disseminating, or causing to be published in a statements, posts, comments, images, or content (whether directly or indirectly) concerning the applicant, the applicant's family, or the applicant's professional affiliations on any social media platform, or other public medium.

2.2 Disclosing, reproducing, or publishing any private correspondence, emails, letters, or communications involving the applicant, his attorneys, or his family;

2.3 Harassing, intimidating, threatening or defaming the applicant in any manner whatsoever;

3 That the respondent be directed, within 24 hours of service of this order, to remove and delete all existing posts comments images or contents publishing published by the by him or any platform not refers to the applicant his family or his professional affiliation and to provide the applicants attorneys with written confirmation that such removal has been affected.

4 That is the respondent pay the costs of this application on the scale as between attorney and client…."

[3] The applicant's cause of complaint related to, amongst others, the statements that were published by the respondent in the social media pertaining to the applicant, his family, and professional association. On the papers before Court, the central issue that brought about the friction was the applicant's son who was facing trial on charges related to gender-based violence (GBV). The respondent, who supported the GBV complainant, made the publications critical of the applicant for supporting his son in the trial he was facing. The respondent admitted authorship of the publications complained of but contended they were true and in the public interest.

[4] The matter was argued by counsel for both parties. The Court, having considered the matter, delivered judgment *ex-tempore* and granted the order it considered appropriate. In short, the Court was satisfied that the matter was urgent and had to be dealt with as such. The Court was satisfied that the applicant met the requirements for the relief it granted.

[5] In particular, the Court granted relief of final interdict only in terms of paragraphs 2.1 of the notice of motion, with costs in favour of the applicant on an attorney and client scale as sought be the applicant. The Court took a view that the other reliefs sought were too broad so much so that they might be unenforceable. The respondent seeks leave to appeal against the final interdict the court granted.

Grounds of appeal

[6] In broad strokes, the respondent's grounds of appeal are that the Court erred in finding that the matter was urgent; that the applicant sought final interdict, and that the applicants satisfied the requirements therefor, and by granting final interdict; in finding that the respondent had provided unconditional undertaking to refrain from making any defamatory statements regarding the applicant and concluding that he had breached that undertaking; and imposing costs on an attorney and client scale.

The Law

[7] Leave to appeal against the High Court judgment or order is governed by the provisions of section 17(1)(a) of the Superior Court Act 10 of 2013 ("the Act"), which provides as follows:

> "(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
>
> (a) (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;"

[8] As the Act provides, leave to appeal can be granted only in two scenarios, the first being where the judge concerned is of the opinion that an appeal would have a reasonable prospect of success. The second scenario is where there are some compelling reasons why the appeal should be granted.

[9] In this case, the application is founded on the provisions of section 17(1)(a)(i) of the Act, namely, that the appeal has reasonable prospects of success. The respondent does not contend that there is some compelling reason why the appeal should be heard as contemplated by section 17(1)(a)(ii) of the Act. Nor does this application for leave to appeal raise any significant questions of law or issues of public importance that may have a bearing on future disputes.

[10] The issue for determination therefore is whether the respondent has met the threshold for the granting of the leave to appeal in this case. This issue turns on whether, in the opinion of the Court, the appeal would have a reasonable prospect of success as envisaged in section 17(1)(a) of the Act.

[11] In *Mont Chevaux Trust v Tina Goosen & 18 Others 2014 JDR 2325 (LCC)* at para (6) Bertelsman J, said the following:

> "It is clear that the threshold for granting leave to appeal against a judgment of a High Court has since been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion *(see Van Heerden v Cronwright and Others 1985(2) SA 342 (T) at 345)*. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ with the court was judgment is sought to be appealed against."

[12] The use by the legislature of the word "only" in section 17(1) of the Act is a further indication of a more stringent test.[1] It is noteworthy though that, while the test is stringent, it does not require the applicant for leave to appeal to show that the appeal will succeed. Rather, the court must establish that there is a reasonable prospect of success based on the grounds advanced.[2]

[13] The prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are reasonable prospects of success must be shown to exist.[3]

[14] In this case, regarding urgency, amongst other considerations was that it was not in dispute that the trial for the applicant's son was resuming on the following day, 26 March 2026, and that in the past, the respondent published in the social media the content complained of during or about the trial. The Court was satisfied that the applicant's apprehension of infringement of his constitutional rights to dignity was well founded, and that he could not be afforded substantial redress at a hearing in due course.

[15] In his answering affidavit, the respondent submitted that the relief sought by the applicant was couched as seeking a final interdict, and as such, the applicant had to meet the requirements thereof in order to succeed. The applicant also submitted that he was seeking a final relief. The Court was satisfied that the relief sought was for final interdict, and had to apply the test accordingly, namely, whether the requirements for final interdict had been met.

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[1] Matoto v Free State Gambling and Liquor Authority (unreported FB Case No 4629/2015 dated 8 June 2017) at para [5]
[2] Mabaso v National Commissioner of Police and Another [2022] ZACC 13
[3] Ramakatsa v African National Congress and Another [2021] ZASCA 31

Thus in the Court's view, the argument that the Court erred in finding that the applicant sought final interdict is unmerited.

[16] The next consideration is whether the Court dealt properly with the test for granting final interdict. The requirements for final interdict are clear right, reasonable apprehension of irreparable harm, and absence of alternative relief.

[17] Regarding clear right, the Court considered that the applicant's right to human dignity, is a non-derogable right in terms of the Constitution, and as such is clear right.[4] This is so because Section 10 of the Constitution provides that 'Everyone has inherent dignity and the right to have their dignity respected and protected.' Further, section 39(1)(a) of the Constitution enjoins the court to promote the values that underlie an open and democratic society based on human dignity, equality and freedom when interpreting the Bill of Rights. In this case, the respondent admitted authorship of the statements which the Court found *prima facie* defamatory to the applicant, and the latter had a clear right to protection.

[18] The respondent's statements of and concerning the applicant, which the respondent admitted having authored were *prima facie* defamatory. The applicant presented compelling evidence that the applicant had a trend of publishing the defamatory statements directed at him personally when there is a hearing of the ongoing trial of his son. The Court found that, given that the trial of the applicant's son would be sitting on the following day, there was reasonable apprehension such conduct would recur, and the applicant would suffer irreparable harm thereby.

[4] Section 10, Constitution Act 108 of 1996

[19] Section 38 of the Constitution endows anyone who alleges that his constitutional right listed in the bill of rights is infringed or threated to approach a competent court and seek appropriate relief. The Court was satisfied that the applicant had no alternative remedy but to approach court to enforce protection of his right.

[20] Counsel for the respondent also argued that the Court failed to apply the Plascon-Evans principle in light of the dispute of fact that arose in the application papers. In the popularly known matter of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[5], the Supreme Court of Appeal stated that: '…where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.'[6] In the application, the Court considered the factual dispute and was satisfied that the applicant's averments that were admitted by the respondent, together with the respondent's averments justified the order. In the Courts view, the rest of the remaining grounds do not take the respondent's case any further, in tilting the scales towards prospects of success.

[21] In conclusion, having considered the grounds of appeal, the Court is of the view that there is no reasonable prospect of a successful appeal in this case. Further, the Court does not find any compelling reason why the appeal should be heard in this matter. Accordingly, it follows that the application must fail.

Costs

[5] 1984 (2) All SA 366 (A)
[6] Ibid page 368

[22] Regarding costs, it is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. The applicant has succeeded in opposing the respondent's application for leave to appeal. He is therefore entitled to an award of costs.

[23] In terms of Rule 67A of the Uniform Rules of Court, Counsel's fees in the context of a party and party costs in the High Court are awarded on Scales A, B, and C as the case may be, depending on a number of factors set out in Rule 67A(3) to be considered when setting out a scale of costs. Such factors include the complexity of the matter, value of the claim, importance of the relief sought and any other relevant factors.

[24] The Court's view that based on the facts, level of legal complexity of the matter, and seniority of Counsel involved, all viewed in totality, costs at Scale B of the High Court scale is warranted in this case.

Order

[25] In the result, the following order is made:

1. The respondent's application for leave to appeal is dismissed.

2. The respondent shall pay the applicant's costs, including counsel's costs, on Scale B of the High Court scale.

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ZL MAPOMA

ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant	:	Adv P Coston
Instructed by	:	C & A Friedlander Attorneys Inc, Cape Town
Counsel for the Respondents	:	Adv M Combrink
Instructed by	:	Everinghams Attorneys, Cape Town