**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: 11 June 2026 [redacted]

Case 2026-061774

In the matter between:

**GIB INSURANCE BROKERS (PTY) LTD** Applicant

and

**JULIAN MADURAY** Respondent

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**JUDGMENT: LEAVE TO APPEAL**

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DU PLESSIS J

*Introduction*

[1] This is an application for leave to appeal against my judgment delivered on 26 March 2026, in which the applicant's urgent application for final interdictory relief was dismissed with costs.

[2] The test for leave to appeal is well known. Section 17(1)(a) of the Superior Courts Act[1] provides that leave may be granted only where the court is of the opinion that the appeal has a reasonable prospect of success, or that there is some other compelling reason for it to be heard. As explained in *MEC for Health, Eastern Cape v Mkhitha*,[2] 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 would reasonably reach a different outcome on the facts and the law.

[3] The applicant's heads set out six grounds of appeal, which can be grouped into three themes:

a. that I failed properly to apply the second requirement for a final interdict, namely injury actually committed or reasonably apprehended in the future, and that I conflated breach with harm;
b. that I erred in interpreting the non-solicitation clause in the parties' CCMA settlement agreement; and
c. that I did not properly consider the absence of an adequate alternative remedy, the balance of prejudice, and alleged "compelling reasons" why an appeal should be heard.

[4] The crux of the applicant's concern in the leave to appeal is that the judgment failed to address the element of reasonable apprehension of future harm and that I adopted an unduly narrow understanding of "solicitation". The respondent disagrees and places emphasis on the email of 13 February 2026, in which the respondent stated that she was actively seeking employment and "would keep in touch", submitting that this wording cannot reasonably support an inference of future solicitation, whether direct or indirect.

[5] I do not intend to repeat in detail what was set out in the main judgment. It is sufficient to note that the parties concluded a settlement agreement at the CCMA on 13 November 2025, under which the applicant waived an existing restraint of trade and the respondent undertook a non-solicitation obligation for 12 months. That clause

[1] 10 of 2013.

[2] [2016] ZASCA 176.

provided that, should the respondent "engage and interact" with the applicant's clients, contractors, agents or employees "in a manner that breaches this clause" within that period, the full settlement amount would become repayable. After termination of employment, while she was unemployed and had no competing business, she responded to certain communications from former clients and staff and, in an email, recorded that she had referred clients back to the applicant, was actively seeking employment, and would "keep in touch". The applicant emphasises this conduct as indicating a breach of the clause and a reasonable apprehension of future harm to its client relationships, goodwill, and proprietary interests.

*Non-solicitation*

[6] My judgment approached the interpretation of the clause using the now-settled *Endumeni*[3] methodology, and I held that the clause is a non-solicitation clause and that, in the ordinary use, would mean active asking, canvassing or enticement, typically to secure business for oneself or a competitor. I also took into account the context, namely that it was a clause in a settlement agreement in which the applicant expressly waived its restraint of trade. That warranted narrower protection, rather than recreating a restraint-of-trade clause as a non-solicitation clause. The words "in a manner that breaches this clause" further supported this reading: not every engagement or interaction is prohibited, only those undertaken for the purpose of solicitation.

[7] The applicant submits that another court would hold that any engagement or interaction with clients is prohibited, regardless of purpose. I do not agree. That reading treats the phrase "engage and interact" in isolation from the contractual and commercial context, where a restraint of trade was expressly waived. On this point, the applicant has not demonstrated that another court would, rather than might, reach a different conclusion.

[3] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

*Injury or reasonable apprehension of harm*

[8] The requirements of an interdict were applied in the main judgment. The applicant's main concern is that I confined myself to the question of whether an injury was actually committed, and not also to whether there was a reasonable apprehension of future harm. It submitted that I conflated the absence of breach with the absence of injury. This is not convincing.

[9] The starting point for assessing both actual and apprehended injury is the content and scope of the right relied on. This, in turn, depends on how the non-solicitation clause is interpreted. The harm lies in conduct that infringes that right. Conduct outside the clause's prohibition cannot constitute an existing injury or a reasonable apprehension of future injury. The respondent's conduct relied upon comprises reactive communication with former clients and staff, her express statement that she is referring clients back to the applicant, and her indication, while unemployed and without a competing business, that she is seeking employment and would keep in touch.

[10] I accept that an undertaking to "keep in touch" with clients during a non-solicitation period may, on a different factual matrix, contribute to a reasonable apprehension of future solicitation (i.e. harm), particularly where the former employee is already employed or engaged with a competitor. But on these facts the respondent was unemployed, had no competing business, and, on her version, was referring clients back to the applicant. On these facts, the email, read as a whole, with the phrase "keep in touch", does not, on its own, create an objectively reasonable apprehension that the respondent *will,* once employed elsewhere, *solicit* the clients in breach of the clause. The applicant's apprehension rests on a series of variables, inferences, and future possibilities (she might find employment, it might be with a competitor, and then she might use the "keep in touch" relationship to solicit), not on concrete facts (i.e. being employed with a competitor and about to solicit). Interdictory relief of this nature cannot be founded on speculative future harm not grounded in

proven facts.[4] Nothing prevents the applicant from approaching a court again should these facts change.

[11] Because the applicant had not demonstrated conduct that falls within the non-solicitation prohibition, it had not established either an injury or a reasonable apprehension of injury to the right created by that clause. In light of the understanding of "non-solicitation" and having found that another court would not reach a different conclusion, this ground must likewise fail.

*Alternative remedy, prejudice and compelling reasons*

[12] The remaining grounds can be grouped together, as they relate to the alleged absence of an adequate alternative remedy, the balance of prejudice, and “compelling reasons” for the appeal to be heard. Again, these grounds presuppose that the other requirements for an interdict have been met. The main judgment found that the applicant has not established the other requirements. Once that is so, the question of alternative remedies and prejudice does not arise.

[13] As for the compelling reason, there are cases involving non-solicitation undertakings, and this case does not raise a sovel or difficult question of law that requires clarification by an appellate court. I am not persuaded that there ei any compelling reason within the meaning of section 17(1)(a)(ii) to warrant leave to appeal.

*Conclusion*

[14] Having considered the grounds in light of the main judgment, I am not satisfied that another court would reach a different conclusion on either the interpretation of the non-solicitation clause or the application of the interdict requirements to the established facts. There is also no compelling reason for the appeal to be heard. The costs should follow the result.

[4] See *Nestor v Minister of Police* 1984 (4) SA 230 (SWA) at 245 H: “This means that, on the basis of the facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant.” Cf. *Reddy v Siemens Telecommunications (Pty) Ltd* [2006] ZASCA 135 and *Experian South Africa (Pty) Ltd v Haynes* 2013 (1) SA 135 (GSJ) where the applicants have taken up new employment with competitors already.

*Order*

[15] The following order is made:

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

[redacted]

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

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| Date of hearing: | 10 June 2026 |
| Date of judgment: | 11 June 2026 |
| For the applicant: | N Janse van Rensburg instructed by EMG Attorneys |
| For the respondent: | AJ Nel instructed by Goldberg Attorneys |