IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 1454/2025
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED: YES/NO
DATE: 18 JUNE 2026
SIGNATURE:

In the matter between :

SAND HAWKS (PTY) LTD **Registration Number : 1999/010163/07**	**Applicant**
and	
65 TWIN PROPERTY 2 (PTY) LTD	**First Respondent**
RBP SECURITY SERVICES	**Second Respondent**
POLOKWANE LOCAL MUNICIPALITY	**Third Respondent**
NETWORTH PROPERTIES (PTY) LTD	**Fourth Respondent**
MINISTER OF POLICE	**Fifth Respondent**
THE SHERIFF OF POLOKWANE	**Sixth Respondent**

PHUMUDZO CONSOLIATION MAPHIRI **Seventh Respondent**

LETLADI MOLOTO **Eighth Respondent**

JUDGMENT

VAN WYK ASL, (AJ)

[1] This is an Application for Leave to Appeal against my Judgment and Order delivered on **7 April 2026**, in accordance with the provisions of Rule 49(1)(b) of the Uniform Rules of the High Court.

[2] Applicant initiated an Urgent Application to this Court, which was set down for hearing on Thursday, 19 June 2025, in which it applied for an Order that the First, Second, Seventh and Eighth Respondents be declared in Contempt of the Order issued by Makoti AJ on **18 February 2025**, under case number 1454/2025[1].

[3] The Applicant applied for ancillary relief in terms of which :

3.1 The First and Second Respondents each be fined R100 000.00, to be paid to the Registrar of this Court; and

3.2 The Seventh and Eighth Respondents each be sentenced to imprisonment for 60 days.

[4] I delivered an extensive Judgment in which I found that the Respondents are **not** in wilful or deliberate Contempt of the Order issued by Makoti AJ on 18 February 2025. I furthermore found that the Respondents did not conduct themselves in a *mala fide* manner, as they *prima facie* complied with the aforementioned order.

---

[1] Paragraph 2 of the Notice of Motion incorrectly refers to “19 February 2025”.

[5] It is **common cause** that the Applicant's possession in respect of the immovable property known as Erf 6[...], East Ridge X3, being the undivided portion of the remainder of the Farm Krugersburg 993 LS, Limpopo Province[2] was briefly restored, pursuant to the Order made by Makoti AJ on 18 February 2025.

[6] The Third Respondent[3] initiated an *Ex Parte* Application on an urgent basis which was enrolled for hearing on **19 February 2025**, under case number 1775/2025, before Mathabathe AJ. Mathabathe AJ issued a rule *nisi* in terms of which the Applicant[4] was effectively evicted from the property, without notice, i.e. on an *ex parte* basis.

[7] The Applicant's possession of the property was therefore disturbed by virtue of the Order made by Mathabathe AJ on 19 February 2025.

[8] The Respondents submit that they did not prevent the Applicant from taking possession of the property, as the Applicant was evicted lawfully from the property by virtue of the Order made by Mathabathe AJ on 19 February 2025.

[9] I found favour with the approach adopted by the Respondents inter alia because the Order by Mathabathe AJ was executed on the 26th of February 2026 and because of the Applicant's acceptance thereof in its replying affidavit.

[10] The Applicant applied in paragraph 5 of its Notice of Motion for an Order that the First, Second, Seventh and Eighth Respondents should restore its undisturbed and peaceful possession of the property immediately.

[11] The Applicant submits that the aforementioned relief stands independent from the relief it applied for in paragraphs 2, 3 and 4 of the Notice of Motion, i.e. Contempt of Court.

---

[2] Hereinafter referred to as "*the property*".
[3] As Applicant.
[4] As First Respondent.

[12] The Respondents submit that the purpose of the application was premised on Contempt of Court proceedings and not to restore the Applicant's possession of the property, as no such a case has been made out by the Applicant in its Founding Affidavit.

[13] The Applicant dealt with this aspect succinctly in paragraphs 6.8 and 6.9 of its Founding Affidavit, in terms of which the First and Second Respondents refused the Applicant access to the property.

[14] I pause to mention that Bresler AJ made an Order on 9 June 2025 in terms of which the *Ex Parte* Order made by Mathabathe AJ on 19 February 2025 and the rule *nisi* contained therein was discharged in its entirety. Bresler AJ furthermore dismissed the application initiated by the Third Respondent under case number 1775/2025 with costs.

[15] The Applicant submits that I did not consider the relief which it applied for in paragraph 5 of the Notice of Motion at all, as I focussed primarily on the aspect pertaining to the Respondents' alleged Contempt of the Order made by Makoti AJ on 18 February 2025.

[16] I understand the Applicant's argument to be that the relief it applied for in paragraph 5 of the Notice of Motion should be regarded as independent and self-standing remedies, and that I conflated such relief with the determination of Contempt of Court, thereby limiting the scope of the inquiry before this Court.

[17] The Applicant therefore submits that I failed to appreciate that the relief applied for in paragraph 5 of the Notice of Motion pertains to the mandatory restoration of possession of the property, whilst the relief contained in paragraph 6 of the Notice of Motion stands as ancillary enforcement through the Fifth and Sixth Respondents.

[18] The Applicant, however, concedes that I correctly found that it was unlawfully dispossessed of its possession over the property, as alluded to in paragraph 20 of my Judgment.

[19] I furthermore found that the First Respondent was objectively in possession of the property from at least 26 February 2025 until 9 June 2025, the latter being the date upon which Bresler AJ made an Order referred to in paragraph 14 *supra*.

[20] I therefore found that the subsequent Eviction Order made by Mathabathe AJ on 19 February 2025 interrupted the factual and legal basis of the possession that the Spoliation Order sought to protect. I dealt with this aspect in paragraph 23 of my Judgment.

[21] I, therefore, found that the Order made by Makoti AJ on 18 February 2025 became academic with matters exciting historical issues and that no live or existing controversy existed between the parties as regards to the Spoliation Order following the Eviction Order issued by Mathabathe AJ on 19 February 2025.

[22] The Applicant, however, submitted that the Order made by Makoti AJ on 18 February 2025 stands, as same has not been set aside, or rescinded, or is the subject matter of a pending Appeal, regard being had to the fact that the Order made by Mathabathe AJ on 19 February 2025 was set aside and discharged in its entirety by Bresler AJ on 9 June 2025.

[23] The Applicant relies on the Order made by Makoti AJ on 18 February 2025, notwithstanding the interruption thereof by virtue of the Order made by Mathabathe AJ on 19 February 2025.

[24] The Applicant further submitted that I was obliged to grant effective relief to vindicate the authority of the Court Order made by Makoti AJ on 18 February 2025 and

that I should have restored its possession of the property in accordance with the aforementioned Order.

[25] The Applicant therefore submitted that I misdirected myself by limiting the inquiry to past compliance and mootness, instead of determining whether it was entitled to restoration of possession of the property, which remained a live and substantive issue, apart from the relief which it applied for insofar as Contempt of the Court Order dated 18 February 2025 is concerned.

[26] Applications for leave to appeal are governed by rule 49(1) of the **Uniform Rules of Court** and Sections 16 & 17 of the **Superior Courts Act**, No. 10 of 2013[5].

[27] In terms of rule 49(1)(b) when leave to appeal is required and it had not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefore shall be furnished within fifteen days after the date of the order appealed against'.

[28] In terms of section 16(1)(a)(i) of the Act an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of section 17(6). Section 17(6)(a) of the Act provides:

> *'If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-*
>
> > *(i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in*

[5] Hereinafter referred to as "**the Act".**

respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal."

[29] Section 17 makes provision for leave to appeal to be granted where the presiding judge is of the opinion that either the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including whether there are conflicting judgments on the matter under consideration.

[30] Considering the statutory and regulatory matrix, three questions for consideration arise in the application for leave to appeal. These questions are not distinct but interrelated. The first question is whether the applicant filed a proper notice of application for leave to appeal which concisely and succinctly set out the grounds upon which leave to appeal is sought. The second question is whether the appeal would have a reasonable prospect of success or whether there are compelling reasons which exist why the appeal should be heard such as the interests of justice. The third question is whether the application for leave to appeal sets out expressly why the default position of an appeal to a full court of the Division should not prevail, as well as the questions of law or fact or other considerations involved which dictate that the matter should be decided by the Supreme Court of Appeal.

[31] In the matter of **S v Smith** the Supreme Court of Appeal held as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the Trial Court. In order to succeed, therefore, the Appellant must convince this Court on proper grounds that he has prospects of success on Appeal and that those prospects are not too

remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success. That the case is arguable on Appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on Appeal."[6]

DID THE APPLICANT FILE A PROPER NOTICE OF APPLICATION FOR LEAVE TO APPEAL

[32] The notice of application for leave to appeal must set out the grounds upon which leave to appeal is sought. The rules do not define 'grounds', but authorities seem to agree that it should be an error of law or facts alleged by the applicant as the defect in the judgment appealed against upon which reliance is placed to set it aside.

See for example - **Xayimpi & others v Chairman, Judge White Commission (formerly known as Browde Commission) & others** [2006] JOL 16596 (E).

[33] An appeal may also lie against the exercise of judicial discretion.

See – **Knox D'Arcy Ltd and Others v Jamieson and Others** 1996 (4) SA 348 (A) [also reported at [1996] 3 All SA 669 (A)].

[34] The first enquiry is whether the notice clearly and succinctly set out in clear and unambiguous terms the incorrect findings of law or fact, or the basis upon which it is contended that the court did not act judicially. For an illuminating discussion on the distinction between findings of law, findings of fact, and judicial discretion.

See **Media Workers Association of South Africa and Others v Press Corporation of South Africa Limited** [1992] 2 All SA 453 (A) at pages 457 – 459.

---

[6] 2012 (1) SACR 567 (SCA) at para 7.

[35] Incorrect findings of fact cannot arise outside the record of proceedings because, save in exceptional circumstances, an appeal court will not permit disputes of face or expert opinion to be raised for the first time on appeal.

See – **Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others** 2005 (2) SA 359 (CC) at 388F-389A. An applicant in an application for leave to appeal needs to show that from the text of the decision appealed against (*ipsissima verba*) that an accepted fact differs from a common cause or undisputed fact in the record of proceedings.

[36] The **Constitution**, legislation, the common law, and customary law are the laws of the Republic. There is a clear hierarchy of laws, with the **Constitution** being the supreme law of the Republic.

See – Section 2 of the **Constitution**. Common law and customary are subject to any legislation consistent with the **Constitution** that specifically deals with it. See - **Alexkor Ltd and Another v Richtersveld Community and Others** (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003) at par 51.

[37] An applicant in an application for leave to appeal who relies on an incorrect finding of law must clearly and succinctly identify the incorrect legal principle applied by the court, and the correct legal principle that should have been applied.

[38] This is, however, not the end of the enquiry, since an appeal can only be noted against the judgment itself (i.e., the substantive order), not the reasons for the judgment, or the way the Court arrived at the judgment.

See - **Cape Empowerment Trust Ltd v Fisher Hoffman Sithole** 2013 (5) SA 183 (SCA) at 198I–J. Even if an applicant in an application for leave to appeal succeeds in convincing the Court that it erred in fact and / or in law, it must also show that the judgment (substantive order) would have been different if the Court applied the correct

law or facts. The notice should therefore clearly specify what orders will be sought on appeal.

[39] In the context of a judgment, legal issues and factual issues can never truly be separated and the question of fact must first be answered before the court will know which legal question must be dealt with. To determine whether the court acted judicially, a determination needs to be made with reference to all the relevant facts and principles. If an application is based on the contention that the Court failed to act judicially, the notice should clearly and succinctly set out all the relevant facts and legal principles which the applicant relies upon, and the decision which in the result should reasonably have been made by the Court properly directing itself.

[40] I am satisfied that the Applicant filed a proper notice of application for leave to appeal.

[41] The Supreme Court of Appeal held as follows in regard to the threshold which a party seeking Leave to Appeal is required to satisfy :

> "*In order to be granted Leave to Appeal in terms of Section 17(1)(a)(i) and (ii) of the Superior Courts Act, an Applicant for Leave to Appeal must satisfy the Court that the Appeal would have a reasonable prospect of success or that there is some other compelling reason why the Appeal should be heard. If the Court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the Appeal. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive."*[7]

[42] The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a Court of Appeal could reasonably arrive at a

---

[7] Caratco (Pty) Ltd v Independent Advisory Ltd 2020 (5) SA 35 (SCA) at para 2.

conclusion different to that of the Trial Court. In other words, the Applicant needs to persuade me on proper grounds that it has prospects of success on Appeal. These 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 prospects of success must be shown to exist.

[43] Considering the grounds of appeal raised by the Applicant and because there is no specific authority for the proposition that an Order granted previously (Makoti AJ- Spoliation Order) became moot, ineffective, or academic in the face of a subsequent Order (Mathabathe AJ- Eviction Order), which Order was thereafter set aside, I am persuaded that the Appeal would have a reasonable prospect of success, notwithstanding the findings and conclusions I arrived at in my Judgment.

[44] I remain mindful of the Orders made by Makoti AJ on 18 February 2025, by Mathabathe AJ on 19 February 2025 and by Bresler AJ on 9 June 2025, which, in my considered view, justifies the attention of the Supreme Court of Appeal.

[45] I consequently make an Order in the following terms :

1. Leave to Appeal is granted to the Supreme Court of Appeal; and
2. The costs of the Application for Leave to Appeal are costs in the Appeal.

ASL VAN WYK
Acting Judge of the High Court
Limpopo Division, Polokwane

APPEARANCES:

HEARD ON	:	12 JUNE 2026
JUDGMENT DELIVERED ON	:	18 JUNE 2026. This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be at 13:30

FOR THE APPLICANT	FW BOTES SC
INSTRUCTED BY	KAMPHERBEEK, TWINE & POGRUND ATTORNEYS POLOKWANE

FOR THE FIRST,SECOND SEVENTH AND EIGHT RESPONDENTS	GP MALULEKE
INSTRUCTED BY	MPHELA MOTIMELE ATTORNEYS POLOKWANE