



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 2024-097438

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

SIGNATURE

DATE:

In the matter between:

ANDRE THEODORE HOLTZHAUSEN

Applicant

and

NOLUNTU NELISSA BAM

Respondent

JUDGMENT ON LEAVE TO APPEAL

Mfenyana J

[1] The applicant (the first respondent in the main application) seeks leave to appeal against the whole judgment and orders of this court, handed down on 21 February 2025. Leave to appeal is sought to the Supreme Court of Appeal, alternatively the Full Court of this Division.

- [2] In its order, this court directed that the order of the magistrates' court be stayed, pending the institution of an application for rescission by the applicant, on the basis that the magistrates' court order was granted without first obtaining the consent of the Judge President of the Gauteng Division, in which the respondent, a sitting judge, serves, as required by section 47 of the Superior Courts Act.
- [3] The respondent (applicant in the main application) has opposed the application and contends that there is no reasonable prospect of another court finding differently. The second to twelfth respondents are not parties in this application.
- [4] Incorporated in the leave to appeal is also an application for condonation for the late filing of the leave to appeal. The application for condonation is not opposed. A litigant who seeks condonation must provide a full and satisfactory explanation for the non-compliance and satisfy the court that good cause exists for granting condonation.
- [5] In making a determination, the court will consider the degree of lateness, the explanation provided for the delay, prospects of success, the importance of the matter and any prejudice that may ensue.
- [6] In the present application, the delay is not inordinate, having been filed only two days out of time. The applicant has provided a comprehensive explanation for the non-compliance. There can be no doubt that the matter is of significance to the parties. It follows that condonation should be granted.
- [7] In the notice of appeal, the applicant raises numerous grounds of appeal. I do not intend to traverse all these grounds, nor do I consider it necessary to do so, given the submissions made on behalf of the applicant at the hearing of this application, that the main issue is whether section 47(1) requires the consent of the Judge President when relief is sought against a separate juristic entity in which a judge has a financial interest. That is the essence of the application.

- [8] The applicant contends that it would be an unjustifiable obstacle placed in the path of a litigant who wishes to litigate against a juristic person to require them to know who its shareholders or members are. Furthermore, the applicant avers that requiring a litigant to do so would offend against the very principle of separate juristic personality.
- [9] A further issue raised is whether, notwithstanding that the respondent was joined to the proceedings at her request, and did not require the Judge President's permission to do so, it was still required of the applicant to obtain such permission, and whether the order placing the body corporate under administration has a negative effect on the respondent.
- [10] The applicant further contends that the matter is of public importance, and requires clarification by the Supreme Court of Appeal.
- [11] For the respondent, it was argued that a litigant is obliged to obtain the consent of the head of court where a judge is an interested party in the proceedings. The fact that the judge was joined to the proceedings that had already commenced does not change the nature of the proceedings, which remain proceedings against a judge and require the permission of the Judge President, the respondent further argues.
- [12] Section 17 (1) of the Superior Courts Act 10 of 2013 states:
- 17(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;...
- [13] On the facts of this matter, I am of the view that the applicant's contention raises important questions of law which may require the attention of a higher court. There is therefore a compelling reason why the appeal should be entertained. Given that the parties had initially requested that the matter be adjudicated by

a judge from another Division, which was granted by the Judge President, it is prudent that leave to appeal be granted to the Supreme Court of Appeal.

Order

[14] Consequently, the following order is made:

- a. Condonation for the late filing of the application for leave to appeal is granted.
- b. Leave to appeal is granted to the Supreme Court of Appeal.
- c. Costs shall be costs in the appeal.



S MFENYANA

Judge of the High Court

Date of hearing: 25 January 2026

Date of judgment: 2 June 2026

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto Caselines. The date of handing down the judgment is deemed to be 2 June 2026.

Appearances

For the applicant

Counsel: SW Davies

Instructed by: Loock Du Pisanie Inc.

For the respondent:

Counsel: SL Shangisa SC with S Kunene

Instructed by: Hlapane Attorneys Inc.