**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

Case no: 1524/2024

In the matter between:

**THE LEGAL PRACTIONERS' INDEMNITY INSURANCE FUND** **APPLICANT**

and

**JOHAN VENTER & ASSOCIATES** **FIRST RESPONDENT**

**CLAUS THOMAS DIETER BRECKWOLDT** **SECOND RESPONDENT**

**Neutral citation:** *The Legal Practitioners' Indemnity Insurance Fund v Johan Venter & Associates and Another* (1524/2024) [2026] ZASCA 95 (3 July 2026)

**Coram:** SMITH JA, DIPPENAAR AND ZILWA AJJA

**Heard:** 28 May 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 3 July 2026.

**Summary:** Reconsideration application – s 17(2)*(f)* of Superior Courts Act 10 of 2013 – application for reconsideration of refusal of petition for leave to appeal – whether grounds for reconsideration and for granting leave to appeal established.

## ORDER

**On application for reconsideration**: referral of decision to refuse leave to appeal, in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013:

The application for reconsideration is struck from the roll with costs, including the costs of two counsel where so employed and the costs of all applications for leave to appeal.

## JUDGMENT

**Dippenaar AJA (Smith JA and Zilwa AJA concurring)**

[1] This is an application under s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act) for the reconsideration and, if necessary, the variation of the order of two judges of this Court (Keightley JA and Bloem AJA) refusing the applicant's petition for special leave to appeal against the order of the full court of the Western Cape Division of the High Court, Cape Town. The reconsideration application was referred for oral argument by the President of this Court,[1] on 6 May 2025. The parties were also directed to present oral argument on the appeal, should that be required.

[2] The dispute between the parties concerns a claim made against the applicant, the Legal Practitioners' Indemnity Insurance Fund (the Fund), by the first respondent, Mr Venter, an attorney and sole practitioner practicing under the name and style of Johan Venter & Associates, and the second respondent, Mr Claus Thomas Dieter Breckwoldt (Mr Breckwoldt), a client of the first respondent. The Fund is a statutory entity established to provide limited indemnity insurance to trust account legal practitioners, Its mandate

[1] Represented by the Deputy President.

was derived from the now repealed s 40 of the Attorneys Act 53 of 1979. Presently, it operates under s 77 of the Legal Practice Act 28 of 2014.

[3] The litigation between the parties has a long and troubled history, to which I later return. The present application relates to proceedings launched by the respondents to direct the applicant to pay the second respondent an amount of R862 213.18, together with interest and costs. The basis of the application was that there had been an arbitration resulting in an award in the first respondent's favour, which award was made an order of court, thereby establishing the applicant's liability for the claim. The primary defence raised by the applicant was that the first respondent had not established its liability as the second respondent had not timeously instituted proceedings against the first respondent, and the first respondent thus had not brought itself within the four corners of the policy. The applicant further contended that the first and second respondents had concluded a secret agreement contrary to the provisions of the policy, resulting in the applicant being excluded from liability. These defences had not been raised during the earlier proceedings between the parties. According to the applicant, the arbitration award was limited to determining that the exclusion clause (clause 16(o)) pertaining to cybercrime was not applicable.

[4] On 21 September 2023, the court of first instance, per Savage J, granted a declaratory order that the applicant was liable to indemnify the first respondent in respect of the loss suffered by the second respondent in the amount of R862 213.18. Such a declaratory order was sought during the hearing of the proceedings. In addition, an order was granted directing the applicant to pay that amount into the trust account of the first respondent, together with interest and costs.

[5] Aggrieved by those orders, the applicant appealed to the full court with leave of the court of first instance. On 10 September 2024, the majority, per Slingers and Fortuin JJ dismissed the appeal with costs. The dissenting minority, per Nuku J would have upheld the appeal and dismissed the application with costs on scale B.

[6] The applicant seeks leave to appeal to this Court against the majority judgment of the full court. It contends that the minority judgment was correct and that the majority judgment, if allowed to stand, would constitute a grave injustice and would bring the administration of justice into disrepute. According to the applicant, it is of great public importance that the appeal be heard, not only to the applicant as a statutory insurer which provides a single policy, but also to all trust account legal practitioners in South Africa, of which there are in excess of 21 000. On the merits, the central issue is whether the full court erred in its approach to (a) the effect and scope of the clause 40 determination, and (b) the requirement that a claim be made against the insured before the Fund's indemnity obligation arises.

[7] For context, it is necessary to set out the facts in some detail. The second respondent was a beneficiary under the will of the late UEH Breckwoldt. Mr Venter was appointed as executor of the deceased estate and was required to pay a benefit to the second respondent from the said estate. During August 2017, the first respondent paid an amount of R862 213.18 into a bank account that was not the account of the second respondent, pursuant to a misrepresentation made to the first respondent's staff member(s). The error was discovered on 14 August 2017. On 15 August 2017, Mr Venter, in writing, notified the Fund of a possible claim against him. The letter bears the heading: 'Claim as a result of payment to a fraudulent account'. It was accompanied by an affidavit reflecting Mr Venter's version of events and the amount paid over. In relevant part, the letter stated:

'To the extent that the banks involved are unable to recover the funds we lodge a claim for the funds paid over…

Please advise of your further requirements.'

[8] On 17 April 2017, the Fund responded as follows:

'I acknowledge receipt of your letter dated 15 August 2017, notifying us of a new claim. The AFIIF policy (copy attached) will unfortunately not respond to this claim. In terms of clause 16(o), the AIIF policy does not cover any liability for compensation arising out of Cybercrime…Please have regard to our dispute resolution procedure contained in clause 40.'

[9] In a letter dated 1 September 2017, the Fund inter alia, stated:

> ‘After considering all the correspondence and your representations, we are of the view that the exclusion in terms Clause 16(o), read with clause IX of the Definitions, applies to this matter. The effect of such application of the clause is that the claim is not covered under the policy’.
>
> The first respondent was invited to follow the process and procedure prescribed by clause 40(b) of the policy. In terms of clause 40, subject to the provisions of the policy, any dispute or disagreement between the insured and the insurer as to any right to indemnity in terms of the policy or as to any matter arising out of or in connection with the policy was to be dealt with in a specified order. Under clause 40(b) the dispute was to be referred to a senior practitioner for a determination. Adv P Coetzee SC was ultimately appointed to make the determination.

[10] At that time, it was only the applicability of clause 16(o), being the cybercrime exclusion clause, that was in dispute between the parties. Clause 1 of the policy defines ‘claim’ as ‘a written demand for compensation from the Insured’, in turn defined as ‘any written communication or legal document that either makes a demand for or intimates or implies an intention to demand compensation or damages from the Insured’. It was common cause in the arbitration that notice of a claim was given, after which the applicant acknowledged receipt of the claim and sought to invoke the provisions of the cybercrime exclusion. The parties to the arbitration thereafter complied with the provisions of clause 40.

[11] The applicant, in its submissions to the arbitrator dated 12 June 2018, inter alia stated: ‘The insured responded on 28 August 2018 to the repudiation of the claim’. On the applicant’s own submissions to the arbitrator, it thus accepted that there was a claim which had been repudiated, thereby acknowledging the existence of the claim. During the proceedings before the court of first instance, the applicant further conceded that the arbitration proceeded on the basis that there was a claim, that the loss suffered was not placed in dispute, and that it was not disputed that the liability of the first respondent to the second respondent arose from the provision of legal services.

[12] Adv Coetzee SC determined the dispute in favour of the first respondent. The applicant did not accept the determination and notified the first respondent that it could institute legal proceedings if it wished to do so. In response, the first respondent launched an application on 5 October 2018 to have the determination made an order of court. Pursuant to opposed proceedings, Le Grange J made the determination an order of court on 25 November 2020. That order remains extant, as the applicant's attempts to appeal the order failed.

[13] Pursuant to a request from the first respondent on 1 September 2022 as to when payment of an amount of R862 213.18 could be expected, a telephonic conversation took place between the applicant's attorney and Mr Venter on 2 September 2022. Pursuant thereto, the applicant, on its version, realised that the policy was not triggered (a) because no claim was first made by the second respondent against the first respondent and (b) that the first and second respondents had concluded 'a secret agreement' contrary to clause 24 of the policy. In its letter of 2 September 2022, the applicant's attorney recorded: 'You [the first respondent] advised that you initially received a letter of demand, which was never followed-up with a summons'.

[14] This triggered the application which forms the subject matter of this application. The second respondent was a party to those proceedings and clearly sought payment, as borne out by the relief initially sought in the notice of motion. During the proceedings and in their heads of argument, the respondents sought the declaratory order which was ultimately granted. Against this backdrop, I turn to the reconsideration application.

[15] On reconsideration, the applicant is required to meet a strict threshold. It must demonstrate to this Court that, if the petition order is not varied, a grave failure of justice would otherwise result, or the administration of justice would be brought into disrepute. It involves a two-stage enquiry: First, the applicant must demonstrate the existence of at least one of the aforesaid requirements. Second, only if the applicant succeeds in doing so may the Court move on to the next stage, being a determination of whether the refusal

to grant leave on petition should be reconsidered.[2] As explained by this Court in *Tarentaal Centre Investments (Pty) Ltd v Beneficio Developments*,[3] the phrase 'exceptional circumstances' encompasses the aforesaid jurisdictional requirements referred to in the first stage of the enquiry.

[16] Reconsideration is an exceptional and narrow procedure, aimed at preventing grave injustice rather than re-litigating settled issues.[4] As stated by the Constitutional Court in *Liesching and Others v S*, the power under s 17(2)*(f)* is not intended as affording a disappointed litigant further bites at the proverbial appeal cherry or a further opportunity to procure relief that has already been refused.[5]

[17] The premise underpinning the Fund's case is that its liability to the first respondent was not established because the first respondent did not bring itself within the four corners of the policy by failing to establish that the second respondent had timeously made a demand on the first respondent. It contends that the judgment of the court a quo creates binding precedent that strict compliance with the policy's contractual provisions is not required, thereby violating the principle of privity of contract between the Fund and the first respondent and trite principles of indemnity insurance law, namely, that a claim must be made against an insured by a third party, as restated by this Court in *Magic Eye Trading 77 CC v Santam Limited.*[6] That, according to the Fund, constitutes exceptional circumstances and illustrates that it would suffer a grave injustice as contemplated in s 17(2)*(f),* given that the policy applies to all trust account legal practitioners and has universal application, resulting in public confidence in the legal system being disturbed and an inappropriate precedent being set.

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[2] *Mary Fisher and Another v the Silverbirch Estate Homeowners' Association (NPC) and Others* (447/2024) [2026] ZASCA 69 (13 May 2026) paras 9,10 and 12 (*Mary Fisher*) and the authorities cited therein; *Road Accident Fund and Others v Mautla and Others* (414/2024) [2025] ZASCA 200 (19 December 2025).
[3] *Tarentaal Centre Investments (Pty) Ltd v Beneficio Developments* (15/2025) [2025] ZASCA 38 (8 April 2025).

[4] *Minister of Police and Another v Ramabanta* [2025] ZASCA 95; 2026 (1) SA 100 (SCA); 2026 (1) SACR 250 (SCA) para 22 (*Ramabanta*).
[5] *Liesching and Others v S* [2018] ZACC 25;2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) paras 138-139; *Avnit v First Rand Bank Limited* [2014] ZASCA 132 (23 September 2014) para 6.
[6] *Magic Eye Trading 77 CC v Santam Limited* [2019] ZASCA 188; 2022 (6) SA 120 (SCA) para 8.

[18] The Fund further contends that it is markedly unusual for a court, as did the court of first instance (endorsed by the full court), to: (a) grant relief to a party on a basis not relied on or advanced by any party and to design a new case for a party; and (b) proceed on the basis of speculation and assumption. It contends that the issue of compliance with clause 22(b) (the demand issue) of the policy was not addressed by the respondents, whereas the applicant provided concrete evidence that the clause was not complied with, and that no letter of demand by the second respondent to the first respondent was ever put up.

[19] The respondents, on the other hand, dispute that the Fund has met the necessary threshold for reconsideration and submit that the Fund has merely repeated the same complaints that have already been considered and dismissed. They place reliance on the finding of the full court that the applicant had abdicated its own procedure and belatedly tried to fix a tactical blunder made in its haste to repudiate the claim.

[20] The Fund's submission that the judgment and order set a binding precedent that strict compliance with the policy's requirements is not required, disregards that each case is fact specific. The judgments (of both the majority of the full court and the court of first instance) did not pronounce on any principle of general application which is contrary to the contractual provisions of the policy or settled principles of indemnity insurance law. The facts of this matter illustrate that the applicant repudiated the claim on the basis of the applicability of an exclusionary clause. At the time the claim was lodged, and throughout the arbitration proceedings, the applicant's own conduct and communications established that it accepted that the first respondent had lodged a claim, which it repudiated. This is demonstrated by the facts set out earlier on this issue. The Fund further never disputed that there was a demand made on the first respondent. Its submission that it was common cause that there was no demand made, is not borne out by the facts. Although it was common cause that no summons had been issued by the second respondent against the first respondent, that was not a requirement of the policy.

[21] The Fund only raised its contractual defences, including the absence of a demand by the second respondent, some five years after being notified of the claim and after the arbitration proceedings had determined that the cybercrime exclusion was not applicable. At that time, the Fund was of the view that the claim had prescribed. Those defences were rejected after full ventilation in all the legal proceedings which followed. The Fund's case clearly evolved throughout the litigation between the parties, a practice deprecated by the Constitutional Court.[7] There is merit in the respondents' submission that the corollary to that approach is that a litigant is required to plead its case fully and should not be entitled to rely on new defences against the same claim at a later stage when the claim had potentially prescribed, as it would cause irreparable prejudice to the other litigant.

[22] The Fund's contentions that its liability to the first respondent was not established and that the court of first instance relied on speculation on the demand issue were fully ventilated before the full court and in the application to this Court. Those submissions were considered and rejected by both the full court and two judges of this Court.

[23] The Fund's contention that the matter is markedly unusual because the court of first instance fashioned relief that was not sought or relied on, does not pass muster. Before the court of first instance, the first debate was whether the application was a claim for payment or a declaratory order, as suggested in the respondents' heads of argument at the time. The overriding dispute between the parties was whether the respondents were entitled to indemnity in terms of the provisions of the policy. As pointed out by the court of first instance in its judgment, at the hearing, the respondents sought alternative relief in the form of a declaratory order compelling the applicant to pay the same amount with interest and costs. That issue was raised and addressed by both parties in argument. The contention that the court fashioned relief of its own volition is thus not sustainable. The Fund's submission that the administration of justice was brought into disrepute or that there was a grave injustice is consequently not supported by the facts.

[7] *DHB v CSB* [2024] ZACC 9; 2024 (8) BCLR 1080 (CC); 2024 (5) SA 335 CC para 46. Principles reconsidering issues on pleadings paras 43-49.

[24] It appears that the Fund has failed fully to appreciate the spirit of its obligations as a statutory insurer in adopting a hostile and aggressive stance towards this claim. The Fund itself, in its papers recognised that a special and unique relationship exists between it and trust account practitioners, different from that between commercial indemnity insurers and their insured.[8]

[25] As held in *Bulk Brick Supplies Property (Pty) Ltd v the South African Board for Sheriffs*,[9] and the authorities referred to therein, our courts have repeatedly said that organs of state have a duty to litigate honourably and make decisions that are reasonable, fair and rational. The same duty would apply to a statutory insurer such as the applicant. Although stated in relation to a claim against the Fidelity Fund for Sheriffs, the same principles are apposite to the position of the Fund as a statutory insurer. As stated by Smith J:

'Even though … bears a statutory responsibility properly to verify claims and ensure that monies are only paid out to deserving claimants, in my view, it also has an obligation to assist claimants by providing guidance in respect of the procedures for lodgment and the supporting documents that it may require for consideration of claims. It is also required to act fairly and reasonably when assessing claims and not to rely on inconsequential technicalities to avoid payment of deserving and duly established claims.'[10]

[26] Similar sentiments were expressed in the judgments of both the court of first instance and the majority of the full court. These judgments point out that the applicant has an obligation to the public to foster faith in the legal system. These obligations are reflected in the policy itself. The purpose of the policy is set out in the preamble to the policy.[11] The applicant's approach undermines public perception and faith in the administration of justice. Whilst it is the applicant's duty to ensure that only valid and

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[8] *Propell Specialised Finance (Pty) Ltd v Attorneys Insurance Indemnity NPC* [2018] ZASCA 142; [2019] 1 All SA 79 (SCA); 2019 (2) SA 221 (SCA).

[9] *Bulk Brick Supplies Property (Pty) Ltd v The South African Board for Sheriffs* (3249/2021) [2022] ZAECMKHC 104 (22 November 2022) para 40.

[10] Ibid para 41.

[11] It provides: 'The Legal Practitioners' Fidelity Fund, as permitted by the Act, has contracted with the Insurer to provide professional indemnity insurance to the Insured, in a sustainable manner and with due regard for the interests of the public by: (a) protecting the integrity, esteem, status and assets of the Insured and the legal profession; (b) protecting the public against indemnifiable and provable losses arising out of Legal Services provided by the Insured, on the basis set out in this policy'.

justified claims are paid out, its corollary duty is to pay valid claims and to act fairly and reasonably. The finding of the court of first instance, as endorsed by the majority of the full court that the piecemeal approach adopted by the applicant '…has undermined the important purpose of the policy which is to preserve the integrity of the legal profession and protect the public against indemnifiable and provable losses arising from legal services rendered', is unassailable.

[27] Ultimately, the applicant has largely rehashed the merits of the case and repeated its previous complaints that were all considered and dismissed. Absent from the considerations advanced by the applicant is an appreciation of its duties and obligations as a statutory insurer. In its unique position, the applicant not only has the obligation to ensure that only bona fide and valid claims are paid out, but it also has a broader public duty to those persons who utilise legal services to ensure that claims are not disputed at all costs. The Fund's importance thus extends beyond compensating individual clients for losses caused by an attorney's negligence. It also supports a broader public interest ensuring that clients are able to instruct attorneys and other trust account practitioners with confidence. That confidence is an important cog in the wheels of the administration of justice. Members of the public often approach attorneys or trust account advocates at moments of vulnerability, uncertainty, or serious legal consequence. They must be able to entrust these practitioners with their affairs, documents, funds and instructions without fearing that a breach of professional duty will leave them without recourse. In this way, the Fund strengthens the relationship of trust between the practitioners and their clients. By doing so it helps preserve public confidence in the legal profession and promotes the effective functioning of the justice system as a whole.

[28] The applicant has not established that the refusal of leave would result in a grave injustice or disrepute to the administration of justice.[12] It follows that the reconsideration application must fail for failing to meet the jurisdictional threshold requirements. It is thus not necessary to consider the remaining issues raised as the Fund fails at the first hurdle. The appropriate order is to strike the application from the roll as the character of the order

[12] *Ramabanta* para 23.

does not involve a merits determination.[13] Costs follow the result. Considering the complexities involved, the employment of two counsel was justified.

[29] In the result, the following order is granted:

The application for reconsideration is struck from the roll with costs, including the costs of two counsel where so employed and the costs of all applications for leave to appeal.

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E F DIPPENAAR

ACTING JUDGE OF APPEAL

[13] *Mary Fisher* paras 70-72.

**Appearances**

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|---|---|
| For the Applicant: | SF Heyns SC with JA Du Plessis |
| Instructed by | Ditsela Inc. Attorneys<br>Honey Attorneys, Bloemfontein |
| For the Respondents: | T Möller SC with M Fourie |
| Instructed by: | Johan Venter & Associates<br>Hill Mchardy & Herbst Inc, Bloemfontein. |