REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-079292

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

19 June 2026
DATE

[redacted]
SIGNATURE

In the matter between:

AH-VEST LIMITED Applicant

and

STANLEY FANAROFF Respondent

Neutral Citation: *AH- Vest Limited v Stanley Fanaroff (2024-079292) [2026] ZAGPJHC ---- (19 June 2026)*

Coram: Khaba AJ

Heard: 15 June 2026

Delivered: 19 June 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date for hand-down is deemed to be 19 June 2026.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold – Leave to appeal refused.

JUDGMENT
[APPLICATION FOR LEAVE TO APPEAL]

KHABA, AJ:

Introduction:

[1] I shall refer to the parties as they are referred to in the main application. This is an application for leave to appeal against the whole of the judgment, order and costs order delivered on 15 May 2026, in which summary judgment was granted in favour of the applicant Stanley Fanaroff ("the applicant"), against the respondent AH- Vest Limited ("the respondent"). In terms of that order, the respondent's points *in limine* were dismissed and the respondent was ordered to pay the applicant an amount of R445 601.34 with interest at the prescribed rate thereon of 11.75% per annum calculated from 18 July 2024, and costs on the attorney and client scale, including counsel's fees on scale C.

[2] The respondent applies for leave to appeal against the whole of the aforementioned judgment, and order, including the order for costs, to the Supreme Court of Appeal, alternatively to the Full Bench of this Court. The applicant opposes the application.

[3] The central question is whether the respondent has satisfied the threshold prescribed in terms of section 17(1)(a)(i) of the Superior Court Act 10 of 2013. The provision permits leave to appeal only where this court is persuaded that the appeal would enjoy reasonable prospects of success, or that some other compelling reasons exists why the appeal should be heard. It is against that standard that the respondent's grounds of appeal must be measured.

[4] The respondent advances five grounds of appeal:

a. The respondent contends that I erred in dismissing the special plea of prescription at the summary judgment stage by requiring proof rather than disclosure of a bona fide defence, and by elevating the request for taxation into an event that interrupted the running of prescription.

b. The respondent submits that I erred in dismissing the special plea of *res judicata*. It is contended on behalf of the respondent that the juridical effect of the Regional Court's dismissal of the provisional sentence proceedings is attended by material ambiguity, more particularly in view of the absence of any order directing the filing of a plea, and the admitted incompleteness of the record of those proceedings. That ambiguity, so the argument runs, engenders a *bona fide* triable issue. In those circumstances, I ought not to have regarded the imperfect transcript as conclusive proof that the prior dismissal was founded exclusively upon procedural grounds.

c. The respondent contends that I erred in admitting and relying upon the applicant's explanatory affidavit dated 18 November 2025. The respondent contended that Rule 32(4) prohibits a plaintiff from adducing any evidence other than the initial supporting affidavit, and that the explanatory affidavit impermissibly sought to cure substantive defects in the founding affidavit, including an incorrect verification of the cause of action and omitted annexures.

d. The respondent contends that I erred in finding that the applicant had properly verified the cause of action and the amount claimed, given the erroneous paragraph 15 in the founding affidavit which referred to an entirely different cause of action and different amounts.

e. That the award of costs on the scale as between attorney and client scale in favour of the applicant constituted a misdirection and was inappropriate in the circumstances, despite the respondent's defences being *bona fide* and legally arguable.

[11] The test for leave to appeal is no longer whether another court might reasonably come to a different view. It is whether there are reasonable prospects of success on appeal, that is, a sound, rational basis for the conclusion that there is a realistic chance of this court's decision being overturned on appeal. A mere arguability or the possibility of an alternative finding does not suffice. The respondent must demonstrate that the appeal would have a tangible, not speculative, prospect of success.

[12] Having carefully considered the seven grounds advanced by the respondent, I find that none, singly or cumulatively, discloses a reasonable prospect of success. The grounds are, in substance, a repetition of arguments already fully ventilated and correctly rejected in the main judgment, they identify no misdirection of law or fact reasonably capable of yielding a different outcome on appeal. In truth, they seek impermissibly to re-litigate the same issues without pointing to any palpable error or novel point of substance.

[13] The respondent has not identified any principle of law that this court misapplied, nor any fact that was materially misunderstood. In my original judgment of 15 May 2026, I have dealt with most, if not all of the issues raised by the respondent in its application for leave to appeal and it not necessary to repeat those in full. Suffice to restate what I said in my original judgment. The application amounts to a disagreement with the outcome.

[14] The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court can come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, which provides that leave to appeal may only be given where a judge concerned is of the opinion that 'the appeal would have reasonable prospect of success'.

[15] It is trite that if a court is unpersuaded of the prospects of success, it must still enquire into whether there is compelling reason to entertain the appeal. However, the merits remain vitally important and are often decisive. In considering the existence of compelling reasons as envisaged by s 17(1)(a)(ii) of the Superior Courts Act. I am also not persuaded that such reasons exist in this matter, when considering in the context of prospects of success on the merits.

[16] In *Ramakatsa and Others v African National Congress and Another*[1], the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a court of appeal 'would' reasonably arrive at a conclusion different to that of the trial court. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[17] The ratio in *Ramakatsa* simply followed *S v Smith*[2] ,in which Plasket AJA (Cloete JA and Maya JA concurring), 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

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[1] *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 (31 March 2021)

[2] 2012 (1) SACR 567 (SCA) at para 7

prospects of success on appeal and that those prospects are not 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 categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[18] In *Mont Chevaux Trust v Tina Goosen*[3], the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in a judgment in *Notshokovu v S*[4]. In that matter the SCA remarked that an appellant now faces a higher and more stringed threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*[5].

[19] As explained in *MEC for Health, Eastern Cape v Mkhitha and Another, Schippers AJA* provided the following guidance on the test[6]:

> "Once again, it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17 (1)(a) of the Supreme Courts Act 10 of 2013 makes it that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.
>
> An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere

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[3] (LCC14R/2014) at para 6

[4] [2016] ZASCA 112 (7 September 2016)

[5] [2016] ZAGPPHC 489 at par 25

[6] [2016] ZASCA 176 at paras 16-17

possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[20] I am not persuaded that the issues raised by the respondent in this application for leave to appeal, are issues in respect of which another court is likely to reach conclusions different to those reached by me. I therefore conclude that there are no reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. Therefore, in my view, the appeal does not have reasonable prospects of success.

[21] Having considered the papers filed on record and the submissions made by the parties, it follows that the application for leave to appeal, must therefore fail. There is no reason to deviate from the normal principle that costs follow the result.

Costs:

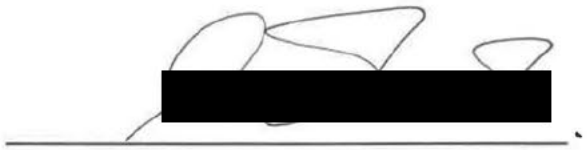
[22] The applicant seeks an order that the application for leave to appeal be dismissed with costs, on an attorney and client scale. The application has been opposed and has failed. There is no reason to depart from the ordinary principle that costs follow the result. Indeed, there is every reason to affirm that principle. I am not persuaded that a punitive costs order is warranted, as sought by the applicant. This is justified considering the all the foregoing circumstances, the respondent has not made out a case which justifies an opinion that would have reasonable prospects of success, or that there any compelling reasons why an appeal should be heard in this matter, costs on an attorney and client scale are not warranted.

Order:

[23] Accordingly, the following order is made:

1. The application for leave to appeal is dismissed.

2. The respondent is ordered to pay the applicant's costs in this application to be taxed on scale C.



KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicant:	Adv. P J Kok
Instructed by:	Petker & Associates Inc Attorneys
For the Respondent:	Adv. E Malherbe
Instructed by:	Stan Fanaroff & Associates
Date of Hearing:	15 June 2026
Date of Judgment:	19 June 2026