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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 041462/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED: YES/NO
DATE 09/06/26
SIGNATURE

In the application for leave to appeal between:

SHAKEEL CARRIM **APPLICANT**

(Identity number: 9[...])

and

FOUR ONE INVESTMENTS (PTY) LTD **FIRST RESPONDENT**

(Registration number: 2002/028153/07)

J3 INVESTMENTS (PTY) LTD **SECOND RESPONDENT**

(Registration number: 1986/004641/07)

In respect of the application for summary judgment between:

FOUR ONE INVESTMENTS (PTY) LTD **FIRST APPLICANT**

(Registration number: 2002/028153/07)

J3 INVESTMENTS (PTY) LTD **SECOND APPLICANT**

(Registration number: 1986/004641/07)

and

SHAKEEL CARRIM **RESPONDENT**

(Identity number: 9[...])

WRITTEN REASONS FOR SUMMARY JUDGMENT HANDED DOWN ON 11 NOVEMBER 2024;

AND

WRITTEN REASONS FOLLOWING THE *EX TEMPORE* JUDGEMENT DISMISSING THE APPLICATION FOR LEAVE TO APPEAL HANDED DOWN ON 22 APRIL 2026

JOYINI AJ

Introduction

[1] On 2 December 2024 the Applicant served its application for leave to appeal against the whole of the order that was granted by me on 11 November 2024.

[2] It is common cause that the *ex tempore* Judgment dismissing the Applicant's application for leave to appeal was handed down on 22 April 2026. In a letter dated 18 May 2026, Attorneys acting on behalf of the applicant (Mr Shakeel Carrim) requested written reasons from me in respect of the following judgments:

(a) The summary judgment handed down on 11 November 2024; and
(b) The judgment on the application for leave to appeal handed down on 22 April 2026.

(a) WRITTEN REASONS FOR SUMMARY JUDGMENT HANDED DOWN ON 11 NOVEMBER 2024

[3] Among the reasons why I granted the summary judgment handed down on 11 November 2024 is the evidence and argument presented before court by counsel for both first (Four One Investments (Pty) Ltd) and second (J3 Investments (Pty) Ltd) Applicants in respect of the application for summary judgment. Counsel argued that the matter relates to the Applicant's alleged misappropriation of company funds yet the applicant has never disclosed any sort of defence to the respondents' particulars of claim.

[4] Instead the applicant elected to take a number of flimsy procedural points and opportunistically contends that his bald denial of the pleaded case against him amounts to a bona fide defence which does not require further elaboration.

[5] By way of example when it was pleaded that the applicant had access and control over and operated the respondents' banking accounts the applicant pleaded that he had no knowledge of the allegations that were being made against him.

[6] Counsel submitted that the applicant's pleaded position is impossible – he either knew or he did not know whether he had access and control over and operated the respondents' banking accounts.

[7] Furthermore, the Applicant even goes as far as denying that he – as a director of the respondent companies – had fiduciary duties towards the respondent companies.

[8] The inescapable inference is that the Applicant has no meaningful, substantive or bona fide defence to the respondents' claims and the order granted must stand as there exists no triable issue whatsoever.

[9] A Defendant opposing summary judgment must disclose the nature and grounds of the defence with enough detail to demonstrate that a triable issue exists. Rule 32(3)(b) of the Uniform Rules of Court requires the defendant to disclose the nature and grounds of the defence and the material facts relied upon. requires the defendant to set out the material facts relied upon. A bare denial or general allegation of dispute is insufficient. Where the defendant presents facts that are inconsistent, incomplete, or unsupported, the court may conclude that the defence lacks bona fides and grant summary judgment.

[10] Maharaj v Barclays National Bank Ltd[1] is a cornerstone South African legal case regarding civil litigation and summary judgment. The landmark Appellate Division ruling

[1] *1976 (1) SA 418 (A)*

set the standard for how courts evaluate a defendant's right to defend against a claim, ensuring swift justice for valid debts while protecting genuine defenses from being prematurely dismissed.

[11] Summary judgment allows Applicants to obtain relief without a full trial when the respondent/defendant (Mr Shakeel Carrim) has no sustainable defence. It is a procedural remedy used to prevent the litigation process from being delayed by defences that are not *bona fide* or not good in law. South African courts recognise that applicants are entitled to enforce a valid claim efficiently, while a respondent/defendant is entitled to defend against allegations that raise a genuine and triable issue. Summary judgment exists to balance these two rights by ensuring that proceedings continue only where real disputes exist.

[12] In civil litigation, courts emphasise that the mechanism does not deny defendants a fair hearing. Its purpose is to prevent the abuse of court process. As explained above in *Maharaj v Barclays Bank,* the inquiry is whether the defendant has disclosed the nature and grounds of the defence with sufficient clarity and whether the defence, if proven, would constitute a valid answer in law. Summary judgment is therefore not a shortcut but a structured tool designed to filter out matters that do not warrant full ventilation at trial.

[13] To succeed, the applicants must show that the defence disclosed does not raise a triable issue. This is exactly what the applicants did in this case and that is the reason why I granted the summary judgment handed down on 11 November 2024.

(b) WRITTEN REASONS FOLLOWING THE *EX TEMPORE* JUDGMENT DISMISSING THE APPLICATION FOR LEAVE TO APPEAL HANDED DOWN ON 22 APRIL 2026

[14] This application for leave to appeal was vehemently and vigorously opposed by the Respondents.

[15] The Applicant alleges that the grounds upon which the appeal would have a reasonable prospect of success are as follows:

1. An appeal court would find that the first and second plaintiffs' amendment of their notice of motion for summary judgement from the bar at the outset of argument in the application for summary judgement, by reducing the amount of R2 693 822.16 initially claimed by both, alternatively one or other plaintiff in their particulars of claim and the application for summary judgement, (and purportedly verified by Ozayr Joosub), to an amount of R1 411 309.79, is fatally defective to the application for

summary judgment and that the application for summary judgment should be dismissed with costs as a result thereof.

2. An appeal court would find that the affidavit deposed to by Ozayr Joosub in support of the application for summary judgment is defective to such an extent that the application for summary judgment should be dismissed with costs as a result thereof.
3. An appeal court would find that the allegations in paragraph 23 of the particulars of claim do not disclose a cause of action against the defendant and that a bare denial thereof by the defendant would suffice. And would further find that it is indeterminable from the allegations in paragraph 27 and 28 of the particulars of claim which plaintiff suffered what amount of damages for which it can be said the defendant is liable.

Why the application failed

[16] It is common cause that the above-mentioned three grounds of appeal set out in the Applicant's notice for leave to appeal are excessively vague. That is, however, not the only respect in which they do not meet the requirements. These grounds are so vaguely formulated as to be of little or no assistance in meaningfully defining the bases of the intended appeal. No attempt is made to identify the factual findings which the Applicant seeks to challenge on appeal nor the findings of law. To say the least, these grounds of appeal are incomprehensible. In M.S.H v J.S.H – Application for Leave to Appeal[2], the Court held: "*[28] The question arises as to the extent a party is bound to the grounds set out in an application for leave to appeal when regard is had to Rule 49(1)(b)? An applicant seeking leave to appeal is required in peremptory terms to stipulate the grounds of appeal[3] in succinct and unambiguous terms[4]. This enables the Court and the Respondent to assess and consider the merits of the application.*

[17] The Respondents, in the notice for leave to appeal, did not set out the grounds for leave to appeal as required in terms of Rule 49(1)(b). In *Songono v Minister of Law and Order*[5] the court held: "*The grounds of appeal must be clearly and succinctly set out in clear and unambiguous terms so as to enable the court and the respondent to be fully informed of the case the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal. This subrule is peremptory in this regard.*"

[18] Nowhere in the leave to appeal application is there a pin-pointed criticism of how I misstated or misunderstood the law.

[2] (8470/2021) **[2023] ZAWCHC 345** (14 September 2023) at paras 28 to 31.
[3] *Phiri v Phiri and Others* (39223/2011) [2016] ZAGPPHC 341 (14 March 2016) at para 9.
[4] *Sogono v Minister of Law Order* **1996 (4) SA 384** (ECO) at 385-386A.
[5] 1996 (4) SA 384 (E) at 385 J to 386 A.

[19] To rely on these above-mentioned three grounds to justify why leave should be granted, an applicant must show that the trial judge committed a clear misdirection, and the findings were clearly erroneous[6].

[20] The leave to appeal application cites no new factual basis or authority showing how another court would likely to find differently.

[21] While the application lists three grounds, none persuasively isolates a single misdirection in my factual findings or the legal inferences I drew. The enumerated grounds thus fail to establish a credible risk that a Court of Appeal "would" overturn the main judgment. I am therefore not persuaded to grant leave to appeal.

[22] Furthermore, an applicant can also seek leave on the basis that there are compelling reasons that justify leave being granted. Section 17(1)(a) of the Superior Court Act[7]. Compelling reasons include, among others, the involvement of substantial public interest, an important question of law, differing judicial interpretations, or a discrete issue of statutory interpretation with implications for future cases[8]. However, where it is proposed that compelling reasons exist why leave should be granted, I am required to consider the compelling reasons also in conjunction with the merits of the appeal, which remain often decisive[9]. In this matter no reliance was placed on the existence of compelling reasons to grant leave.

[23] Recent jurisprudence, on the test for application for leave to appeal, reveals that the change of wording from "**might**" to "**would"** has resulted into a higher test than previously applied. The Supreme Court of Appeal in the Judgment of **MEC for Health, Eastern Cape v Mkhitha**[10] eloquently explained the effect of the amendment of section 17(1)(a) as follows: *"[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there is truly a reasonable prospect of success.* ***Section 17(1)(a)*** *of the* ***Superior Courts Act 10 of 2013*** *makes it clear 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. [17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of*

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[6] *A M and Another v MEC for Health, Western Cape* (1258/2018) [2020] ZASCA 89; 2021 (3) SA 337 (SCA).

[7] Section 17(1)(a) of the Superior Court Act.
[8] Van Loggerenberg: *Erasmus* Superior Court Practice (3rd ed) Vol 1 D106-108.
[9] *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* **2020 (5) SA 35** (SCA) at para 2.
[10] (1221/15) [2016] ZASCA 176 (25 November 2016); S v Smith 2012 (1) SACR 567 (SCA) para 7.

success on appeal. A mere 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. [18] In this case the requirements of 17(1)(a) of the ***Superior Courts Act were*** *simply not met…"*[11]

[24] In *Four Wheel Drive v Rattan N.O.* **2019 (3) SA 451** (SCA), the following was ruled by Schippers JA (Lewis JA, Zondi JA, Molemela JA and Mokgohloa AJA concurring): *"[34] There is a further principle that the court a quo seems to have overlooked — leave to appeal should be granted only when there is 'a sound, rational basis for the conclusion that there are prospects of success on appeal'.*

[25] In *Phiri v Phiri and Others,*[12] the Court held: *"[9] An application for leave to appeal is in terms of Rule 49 of the Uniform Court. Rule 49(l)(b) of the Uniform Court Rules provide as follows: "When leave to appeal is required... application for such leave shall be made and the grounds thereof shall be furnished..." The use of the word "shall" denote that this sub rule is peremptory. The Applicant must set out the grounds upon which he seeks to appeal. In the matter of Songono v Minister of Law Order,*[13] *the Court held at 3851—386A that: "... the grounds of appeal required under Rule 49(l)(b) must ...be clearly and succinctly set out in clear and unambiguous terms so as to enable the Court and the Respondent to be fully and properly informed of the case which the Applicant seeks to make out and which the Respondent is to meet in opposing the application for leave to appeal. .. Rule 49(l)(b) must also be regarded as being peremptory. [10] In casu, the grounds tabulated in paragraph [2] supra, can hardly qualify to be grounds. In this regard the notice for leave to appeal is fatally defective and, on this ground, alone the application for leave to appeal should be dismissed.*

[26] Let me comment on an amendment to Rule 49 which came into effect after the judgments in *Songono* and *Xayimpi* referred to above were handed down. Rule 49 (3) was substituted by GN R472 of 12 July 2013. The sub-rule in its present form came into effect on 16 August 2013. Prior to its amendment and at the time when *Songono* and *Xayimpi* were decided the sub-rule read as follows: *"(3) The notice of appeal shall state whether the whole or part only of the judgment or order is appealed against and if only part of such judgment or order is appealed against, it shall state which part and shall further specify the finding or fact and/or ruling of law appealed against and the grounds upon which the appeal is found."* It is this sub-rule which was held to be peremptory and, by parity of reasoning, that Rule 49 (1) (*b*) is peremptory. Sub-rule (4), prior to the amendment, provided that: *"A notice of cross-appeal shall be delivered within ten days after delivery of the notice of appeal or within such longer period as may upon good cause shown be permitted and the provisions of these Rules*

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[11] *S v Smith* **2012 (1) SACR 567** (SCA) para 7.

[12] (39223/2011) [2016] ZAGPPHC 341 (14 March 2016).

[13] *Songono v Minister of Law-and-Order* **1996 (4) SA 384** (E) at 3851-386A.

with regard to appeals shall mutatis mutandis apply to cross-appeals." Sub-rule (3) in its present substituted form is identical in every respect to the erstwhile sub-rule (4). The present sub-rule (4) reads: *"Every notice of appeal and cross-appeal shall state:(a) what part of the order is appealed against; and (b) the particular respect in which the variation of the judgment or order is sought."*

[27] The effect of the amendment therefore was to deal with the subject matter of the erstwhile sub-rule (3) in the new sub-rule (4). The judgments in *Songono* and *Xayimpi* must accordingly be read in this light. The basis upon which *Songono* held that the erstwhile sub-rule (3) was peremptory is to be found in the following passage of the judgment: *"Accordingly, insofar as Rule 49 (3) is concerned, it has been held that grounds of appeal are bad if they are so widely expressed that it leaves the appellant free to canvass every finding of fact and every ruling of the law made by the court a quo, or if they specify the findings of fact or rulings of law appealed against so vaguely as to be of no value either to the Court or to the respondent, or if they, in general, fail to specify clearly and in unambiguous terms exactly what case the respondent must be prepared to meet - see, for example, Harvey v Brown* ***1964 (3) SA 381*** *(E) at 383; Kilian v Geregsbode, Uitenhage* ***1980 (1) SA 808*** *(A) at 815 and Erasmus Superior Court Practice B1-356-357 and the various authorities there cited."*

[28] This rationale applies, with equal force, to the proper interpretation of sub-rule (4). Accordingly, the subsequent amendment of Rule 49 has not altered the law regarding compliance with its provisions. The effect is that where a party fails to comply with the peremptory requirements of Rule 49 (1) (*b*) inasmuch as they do not set out the grounds of appeal in clear, unambiguous and succinct terms, the court hearing the application may, on that basis, dismiss the application.

[29] I am not persuaded that another Court will come to a conclusion different from my conclusion. The Applicant has no prospects of success.

Conclusion

[30] The leave to appeal procedure ensures that the appeal process is not abused and that only meritorious cases proceed to appeal. Understanding the requirements for leave to appeal can save time and resources for litigants. It is essential to comply with the relevant rules and procedures when seeking leave to appeal to avoid the dismissal of the application. Failure to comply with these requirements may result in the dismissal of the application.

[31] In *Van Den Berg v Land and Agricultural Development Bank of South Africa and Others*,[14] the Court held: *"[14] The grounds for appeal are out of context and fatally defective. The general arrangement of the grounds on which the applicant seeks leave to appeal is to criticise the judgment on an almost paragraph-by-paragraph and word-by-word basis without specifying what effect any asserted erroneous finding or conclusion has on the correctness of the substantive order. The disjointed approach in which the applicant has expressed his application for leave to appeal influences against the importance of interpreting the judgment of the court as a whole and in context. The first and second respondents are correct where they stated that the grounds on which the applicant seeks leave to appeal are not set out in precise, and succinct and unambiguous terms. It is difficult to distinguish what and on what basis the applicant seeks to impugn the substantive order made by the Court. [15] In Democratic Alliance v President of the Republic of South Africa and Others (2124/ 2020) [2020] ZAGPPHC 326 (29 July 2020) at paragraphs [4] – [5] the Full Court held as follows: '…This dictum serves to emphasise a vital point: Leave to appeal is not simply for the taking. A balance between the rights of the party which was successful before the court a quo and the rights of the losing party seeking leave to appeal need to be established so that the absence of a realistic chance of succeeding on appeal dictates that the balance must be struck in favour of the party which was initially successful.'"*(Accentuation added)

[32] In *Songono* case *supra,* Leach J said the following: *"It seems to me that, by a parity of reasoning, the grounds of appeal required under Rule 49 (1)(b) must similarly be clearly and succinctly set out in clear and unambiguous terms so as to enable the Court and the respondent to be fully and properly informed of the case which the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal." It is therefore trite that leave to appeal may also be dismissed if the grounds of appeal fail to comply with the requirements of Rule 49(1)(b), by being couched in ambiguous and vague terms."* The Applicant's grounds of appeal, in *casu*, failed to comply with the requirements of Rule 49(1)(b) and as such, this is a legal basis to dismiss the application.

[33] It is common cause that section 17(1)(a)(i) has now "raised the bar for granting leave to appeal" requiring that the matter "would" have reasonable prospects of success, not merely that it "may" have such prospects.[15] This has been confirmed by

[14] (1955/2016) [2023] ZAFSHC 504 (22 December 2023).

[15] Acting National Director of Public Prosecution and Others v Democratic Alliance; In re Democratic Alliance v Acting National Director of Public Prosecution and Others 2016 ZAGPPHC 489 (24 June 2016) at paras 25, 29 (Full Court), citing The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others LCC 14R/2004 at para 6.

the SCA.[16] The Applicant is required to satisfy the test for leave to appeal under section 17(1) of the Superior Courts Act. In *casu*, the applicant has failed the test for leave to appeal as set out in the 2013 Act. and as such, this is a legal basis to dismiss the application.

[34] The applicant has tendered no compelling grounds for application for leave appeal to be granted. The applicant has provided no basis to suggest that this Court's assessment of the evidence was misdirected, nor has it shown that there are reasons that would convince a court of appeal that this Court was wrong. As such, this is a legal basis to dismiss the application. The Applicant has not suggested that there are compelling reasons why an appeal should be heard as contemplated by section 17(1)(a)(ii) of the Act. I see none. The application for leave to appeal does not raise any significant questions of law or issues of public importance that may have a bearing on future disputes. I have carefully considered the applicant's grounds of appeal. I am unpersuaded that another Court would reasonably arrive at a different conclusion.

[35] In my view, after careful consideration of the applicant's grounds for leave to appeal and the submissions from both parties, there is nothing that persuades me that this appeal would have a reasonable prospect of success. There are also no compelling reasons why leave to appeal should be granted. Therefore, the application for leave to appeal against the whole Judgment *a quo* and the Court Order cannot be sustained and as such, it stands to be refused. Firstly, because it is fatally flawed; and secondly, because there is no sound and rational basis for the conclusion that there are prospects of success on appeal. The Respondent has therefore successfully opposed the Applicant's application for leave to appeal.

ORDER

[36] **In the circumstances, the following order is made:**

[36.1] The application for leave to appeal is dismissed with no order as to cost

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[16] Mothuloe Incorporated Attorneys v The Law Society of the Northern Provinces & another [2017] ZASCA 17 (22 March 2017) at para 18; Notshokovu v S [2016] ZASCA 112 (7 September 2016) at para 2: "[a]n appellant … faces a higher and stringent threshold, in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959."

T E JOYINI

ACTING JUDGE OF THE HIGH COURT, PRETORIA

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Date for written reasons in respect of (a) the summary judgment handed down on 11 November 2024; and (b) the judgment on the application for leave to appeal handed down on 22 April 2026: **18 May 2026**

Date for handing down the written reasons: **9 June 2026**

The written reasons in respect of (a) the summary judgment handed down on 11 November 2024; and (b) the judgment on the application for leave to appeal handed down on 22 April 2026 have been delivered by uploading it to the Court online digital data base of the Gauteng Division, Pretoria and by e-mail to the Attorneys of record of the parties. The deemed date and time for the delivery is 9 June 2026 at 10h00.