**IN THE HIGH COURT OF SOUTH AFRICA**

**NORTH WEST DIVISION, MAHIKENG**

**Not Reportable**

Case No: 3036/2019

In the matter between:

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| **R[...] E[...] M[...]** | **APPLICANT** |
| and | |
| **M[...] S[...] M[...]** | **FIRST RESPONDENT** |
| **MIKA 01 TRADING (PTY) LTD** | **SECOND RESPONDENT** |
| **NIKI 001 TRADING (PTY) LTD** | **THIRD RESPONDENT** |
| **MIKA SMARTSHOP (PTY) LTD** | **FOURTH RESPONDENT** |

**Coram:** Masike AJ

**Date Heard:** 27 March 2026

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail, and released to SAFLII. The date that the judgment is deemed to be handed down is **7 JULY 2026** at **10h00**.

**Summary:** Application for leave to appeal – requirements of section 17(1)(a) of the Superior Courts Act 10 of 2013 – grounds for leave to appeal must be set out succinctly in clear and unambiguous terms – notice of application for leave to appeal not complying with rule 49(1)(b), application for leave to appeal may be dismissed on that ground alone – applicant in application for leave to appeal must engage the reasoning of the judgment that he wishes to be granted leave to appeal against and demonstrate misdirections by the court before leave may be granted.

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**JUDGMENT**

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**MASIKE AJ**

## Introduction

[1] Mr R[...] E[...] M[...], the applicant, applies for leave to appeal to the Full Court of the Division, alternatively the Supreme Court of Appeal, the whole of the judgment and order made by this Court on 30 September 2025, granting absolution from the instance with costs. Mrs M[...] S[...] M[...] (the first respondent), Mika 01 Trading (Pty) Ltd (the second respondent), Niki 001 Trading (Pty) Ltd (the third respondent) and Mika Smartshop (Pty) Ltd (the fourth respondent), collectively referred to as the respondents, oppose the application.

## Grounds of appeal

[2] The applicant filed an application for leave to appeal against the judgment on 20 October 2025. The applicant seeks leave to appeal on the following grounds formulated as follows:

‘1.1 The court absolved the Respondents from the instance with costs, having primarily found that the Applicant personally made scanty or no significant contribution towards the alleged partnership agreement.

1.2 The court, having espoused all essentialia of a partnership agreement as stipulated by Pothier and having acknowledged that our law recognises the same, erred in finding that a partnership agreement did not exist between the parties.

1.3 The court erred in finding that the Plaintiff/ Applicant made no contribution, or if any, that such contribution was so insignificant as to justify a finding in favour of the Applicant.

1.4 The court erred in concluding that Lydia Road Trading 004 CC, a legal entity of which the Applicant is the sole member, was the main contributor rather than the Applicant personally, disregarding the direct and indirect contributions made during marriage and after.

1.5 The court further, misdirected itself by rejecting Applicant’s explanation that the universal partnership was conceived during the subsistence of the marriage, when both parties, then married in community of property, acquired Mika 01 and Niki 001 circa October 2012 in the names of the Firs Respondent as vehicles to conduct Lydia Road’s business in the near future, and which came to fruition in or around early 2013.

1.6 The court further misdirected itself in holding that the relationship was commercial in nature and aimed at preservation of the erstwhile Delareyville and Ganlaagte Build It business as had been the case everything would have been dissolved and divided during the divorce. The parties consciously and deliberately intended to form a partnership involving all their assets present and future as demonstrated by the divorce settlement agreement in terms and their conduct thereafter.

1.7 The court, furthermore, misdirected itself by failing to distinguish between registered shareholding in terms of the Companies Act 71 of 2008 and beneficial shareholding (wherein a "nominee" would exercise the rights on behalf of the beneficial holder.

1.8 The court further misdirected itself by failing to draw a clear distinction between treatment of company shares in divorce matters as contemplated in Section 7(1) of the Divorce Act 70 of 1979 (see De Sousa v Technology Corporation Management (Pty) Ltd and Another 2018 ZAGPHC 445) vis a vis registered shareholding or voting in board meetings.

1.9 The court conflated Family law with Company law, resulting in a legally untenable argument by the First Respondent's legal representative that the Applicant was supposed to have had his shares in the companies registered in the names of the First Respondent only, be registered in his name as well.

1.10 The court, similarly misdirected itself in holding that Lydia Road (and the shares or members interest therein) was solely owned by the Applicant notwithstanding the parties marriage regime, despite evidence in the divorce settlement agreement of 1 August 2013 showing the parties intentionally elected not to divide certain assets, amongst others, immovable and company shares, as contemplated by Section 7(1) of the Divorce Act 70 of 1979.

1.11 The court further, erred in finding that the Applicant did not contribute to the running and management of Lydia Road, Mika 01, Niki 001, Mika SmartShop, despite clear evidence to the contrary, as the Plaintiff was extensively involved in the formation, strategic planning and management of all business and other related aspects of the parties' and their two minor children's lives.

1.12 The court, furthermore, erred in failing to recognize that Mika 01 and Niki 001 were both acquired during the subsistence of the marriage, thus forming joint assets irrespective of registered shareholding.

1.13 The court further, erred in failing to recognize that the immovable properties, Erven 1[...] and 4[...] Delareyville, registered in both parties' names, were joint assets especially at the time when they were endorsed in 2014 in favour of the Spar Group and not endorsed/or purportedly transferred into the names of First Respondent alone (which only occurred upon the properties being released back from the endorsement by the Spar Group circa late 2018 and which the Applicant only learnt about during 2019).

1.14 The court further erred in misinterpreting the provisions of section 45bis(A)(1) of the Deeds Registries Act 47 of 1937 by treating the endorsement for Credit Guarantee in favour of the Spar Group as a transfer of the Applicant's undivided halfshares ownership to the First Respondent,( which transfer would have required the requisite knowledge and written consent of the Applicant to be legally effected) contrary to established authority (see Absa Bank Ltd v LGC and Another 2021 ZAGPPHC and Fischer v Ubomi Ushishi Trading 2018 ZASCA).

1.15 The court, furthermore, misdirected itself by reducing the Applicant's contribution to mere transportation of stock "twice or thrice" as his total contribution to the business over a period extending five years failing to appreciate the extensive role Applicant played in the formation as well as strategic planning and management of the communal enterprise as well as family affairs of the parties.

1.16 The court further, misdirected itself in not recognizing the fact that without the Applicant's contribution (by agreeing to his undivided half shares in the two properties) to secure the R2000 000 (two million rand) Credit Guarantees from the Spar Group necessary to beef up stocks for both Mika 01 and Niki 001 respectively, constitutes a major personal contribution to the communal enterprise.

1.17 The court further erred, in failing to recognize that Mika 01 was acquired and also started operating (circa March 2013) during the subsistence of the marriage and was entirely founded and financed through the proceeds of another jointly owned asset, viz. Lydia Road, giving rise to both registered and beneficial shareholding by both parties in the entities concerned.

1.18 The court further erred, in holding that the Applicant was not party to the running and management of the affairs of Mika Smart shop (the Fourth Respondent) as it was initially operated by and under Mika 01 until early 2019, when it was incorporated just after the falling out between the parties, a fact raised during the Applicant's testimony in chief.

1.19 Furthermore, the court erred in not taking cognizance the fact that the parties' finances and financial responsibilities were both intricately and inextricably intertwined from a business as well as family perspective.

1.20 Demonstrably from the conduct of the parties both during the subsistence of their marriage and after, there was never a distinction between what is yours or mine, as all resources were pooled together into one pot for the benefit of both parties, for instance, payment of debts such as mortgage bonds and motor vehicles initially by paid for by Lydia Road and later by Mika 001.

1.21 The court, furthermore, erred in downplaying the role played by the Applicant in affecting major structural alterations to some of the immovable properties in both Delareyville and Johannesburg respectively, which resulted in huge enhancement of both their aesthetic as well as market values.

1.22 The parties would from time to time, for instance, jointly choose and purchase household furniture and other related home items for both properties in Delareyville as well as Johannesburg from the proceeds of the communal enterprise.

1.23 Similarly, the Guardianship and custody of the two minor children viz, Mika and Niki was left intact during and after the divorce, their maintenance and all needs were catered for from the same joint resources both in Dellareyville, Northwest as well as Johannesburg Gauteng Provinces at all material times.

1.24 Furthermore, acquisition of, for instance, the Northcliff property, situated in the Gauteng Province, which was partly paid by the Applicant through Lydia Road and subsequently paid for by and registered in the names of First Respondent circa, July 2018 through the proceeds derived from the communal enterprise clearly demonstrates the intentions and the extent of the relationship of the parties.

1.25 Contrary to the findings of the court, that the relationship was no more than a commercial manouvre *(sp)* aimed at preservation of Lydia Road's interests, the relationship of the parties extended further than romantic entanglements of husband and wife and clearly demonstrates partners' conduct.

**2. Prospects of success**

2.1 The Doctrine of Universal Partnership – South African common law recognizes a partnership arising from the express or tacit agreement between parties to contribute to a joint enterprise for mutual benefit. The Applicant's contributions, both financial and non-financial, meet the essentialia of such partnership.

2.2 Section 7(1) of the Divorce Act 70 of 1979 – This section empowers courts to make equitable orders regarding the division of assets in a divorce settlement. The court a quo failed to give effect to this provision by disregarding all assets jointly acquired during the marriage, which were carried over continuously into the cohabitation relationship that extended over a period of more than five.

2.3 The court failed to deal with the provisions of the Deeds Registries Act 47 of 1937, particularly as it relates to section 45 bis (A1) endorsements as well as acquisition of immovable properties without the other spouse' knowledge and written consent, as was the case in this instance.

2.4 In conclusion, the Applicant respectfully submits that the Honourable Court's judgment was vitiated by errors of both fact and law. The Applicant submits that based on the above stated grounds, the appeal would have reasonable prospects of success.

Wherefore Applicant respectfully submits that therefore reasonable prospects exist based on compelling reasons and legal principles as pointed out above.'

## The test for leave to appeal

[3] Section 17(1) (a) of the Superior Courts Act 10 of 2013 reads as follows:

'(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;'

[4] The test in an application for leave to appeal is stringent and onerous. The applicant must satisfy the court that there are reasonable prospects of the appeal succeeding or there is some other compelling reason why the appeal should be heard. In *Smith v S*[1] Plasket AJA (as he then was), writing for the court, said the following at paragraph 7:

'[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a 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 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.'

[1] (475/10) [2011] ZASCA 15 (15 March 2011).

[5] In *Mont Chevaux Trust v Goosen*[2] in paragraph 6, the court said the following:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

[6] In *Ramakatsa and Others v African National Congress and Another*[3] at paragraph 10, Dlodlo JA writing for the court said the following:

'Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in Caratco, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'. I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. 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 conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but

[2] 2014 JDR 2325 (LCC).

[3] (724/2019) [2021] ZASCA 31 (31 March 2021).

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.' (footnotes omitted)

## The objection by the respondents

[7] Before turning to the merits of the application for leave to appeal. I am constrained to state that the Notice of Application for Leave to Appeal (notice) was unduly prolix, with some grounds for leave to appeal repeated on several occasions in the notice; the notice was vague in certain aspects, analysing at times incorrectly certain of the evidence and the findings of this Court, making certain submissions which were never advanced during trial and making reference to case law. The grounds for the application for leave to 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. The subrule is peremptory in this regard.[4]

[9] The respondents have taken issue with the applicant's notice. It is submitted on behalf of the respondents that the applicant's grounds of appeal, as contained in his notice, are lengthy and difficult to discern, and the respondents are uncertain as to what grounds the applicant ultimately intends to rely upon. It is further contended on behalf of the respondents that the applicant's difficulty is compounded by his heads of argument, which amount largely to a repletion of the submissions advanced at trial and a rectification of general principles of law relating to universal partnerships and the test for absolution from the instance, without engaging in any meaningful way with the reasoning of the court a quo or demonstrating any material misdirection in its assessment of the evidence, particularly in relations to its findings that the applicant failed to establish the essential requirements of a partnership.

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[4] *Songono v Minister of Law and Order (Songono)* 1996 (4) SA 384 (E) at 385I–J.

[10] In *Songono*, it was held that an application for leave to appeal may be dismissed because the notice of application for leave to appeal was '*lengthy and rambling*'. The court, referring to rule 49(1)(b) of the Uniform Rules of Court, said the following:

'At the outset the applicant faces a procedural difficulty. Leave to appeal was not requested at the time of judgment and Rule 49(1)(b) accordingly became of application. It provides that:

"When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within 15 days after the date of the order appealed against . . ."

In attempted compliance therewith the applicant filed a document headed 'Application for leave to appeal', in which he purported to set out the grounds upon which leave to appeal was to be sought. These so-called 'grounds' constitute a diatribe of some 17 pages criticising the judgment, analysing (at times incorrectly) certain of the evidence and the findings made, putting forward certain submissions and quoting various authorities. This lengthy, convoluted and at times disjointed criticism of the judgment did not clearly and succinctly spell out the grounds upon which leave to appeal is sought in clear and unambiguous terms - indeed, it served more to deceive, particularly as, during the course of argument, there were several points which the applicant's counsel, Mr Bursey, sought to raise which were not indicated in the document.'[5]

[11] The court in *Songono* then went on to say:

'In my view the lengthy and rambling notice of appeal filed in *casu* falls woefully short of what was required. <u>Mr Bursey suggested that grounds of appeal could be gleaned from the notice but that is not the point - the point is that the notice must clearly set out the grounds and it is not for the Court to have to analyse a lengthy document in an attempt to establish what grounds the applicant intended to rely upon but did not clearly set out. On this basis alone the application seems to me to be fatally defective and must be dismissed.</u>'[6] (my emphasis)

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[5] *Songono* at 385B-E.

[6] *Songono* at 386A-B.

[12] In *MEC for Health, Eastern Cape v Melane (Melane)*[7], the view of the court in *Songono* was quoted with approval by the Full Court and at paragraph 56, the Full Court said the following:

'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.'

[13] This view in *Songono* continues to be followed and has recently been applied in *Kopano Uitkyk Farming Enterprise (Pty) Ltd v National Government of the Republic of South Africa and Others* (3805/2022) [2025] ZAFSHC 51 (27 February 2025) paragraphs 5 and 6.

[14] Rule 49(1)(b) exists not for the purpose of frustrating a would-be appellant. It exists to ensure that the appellate process is purpose-directed to identify errors or misdirections where they occur and to marshal the extremely scarce judicial resources of a higher court to correct them. In the first instance, this requires careful and considered analysis by the party seeking to determine whether the judgment or order is tainted by any errors or misdirections. Secondly, once those errors or misdirections have been identified and succinctly stated in the notice, the rule serves to afford the respondent an opportunity to consider whether to abandon or defend the judgment.[8] This Court had to trawl through the lengthy and convoluted notice to discern the possible reasons for the grounds of appeal. This should not have been, and on this ground alone, the application must be dismissed.

**Merits of the application for leave to appeal**

[15] In the event that I am wrong, I have considered the grounds for leave to appeal. As I indicated above, some of the grounds in the notice are repeated. In

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[7] 2022 JDR 1642 (ECM).

[8] *Melane* para 62.

the heads of argument filed on behalf of the applicant, the applicant did not engage with a majority of the grounds of appeal raised in the notice. There was no indication that the applicant abandoned those grounds of appeal, suggesting that the applicant still pursued them, but in oral submissions made to this Court, the majority of the grounds were not addressed, and this Court accepts that the grounds for leave to appeal, which were not addressed in the heads of argument and in oral submissions before this Court, have been abandoned.

[16] The grounds for leave to appeal which were addressed in the heads of argument of the applicant were the following: (a) that this Court erred in finding that the applicant failed to establish all of the essentials of a universal partnership; (b) that this Court erred in finding that the contribution of the applicant was insignificant; and (c) that this Court made a final finding on the merits at the close of the applicant's case when considering the application for absolution from the instance and this goes directly against the threshold set in *Claude Neon Lights (SA) Ltd v Daniel (Clause Neon Lights)* 1976 (4) SA 403 (AD).

[17] It appears from the reading of the heads of argument of the applicant, that the challenge to the judgment of this Court is directed primarily at this Court's findings that the applicant failed to establish two essential requirements of a partnership (i) that the applicant contributed to the alleged universal partnership and (ii) that the business of the alleged partnership was carried on for the joint benefit of the parties.

[18] This Court addressed the requirements for a universal partnership, as reaffirmed in *Butters v Mncora.*[9] (a) Firstly, that each of the parties brings something into the partnership or binds themselves to bring something into it,

[9] (181/2011) [2012] ZASCA 29; 2012 (4) SA 1 (SCA); [2012] 2 All SA 485 (SCA) (28 March 2012) para 11.

whether it be money, labour or skill; (b) the second element is that the partnership business should be carried on for the joint benefit of both parties; (c) the third is that the object should be to make a profit; (d) a fourth element proposed by Pothier, namely, that the partnership contract should be legitimate, has been discounted by the courts for being common to all contracts.

[19] This Court found that the applicant failed to establish the first and second essential requirements of a partnership. This Court arrived at this finding after careful analysis of the applicant's evidence. The applicant has not demonstrated any material misdirection in the reasoning of this Court in this regard. The applicant relies on the decision of *Pezzutto v Dreyer and Others (Pezutto)* (209/90) [1992] ZASCA 46; 1992 (3) SA 379 (AD); [1992] 2 All SA 81 (A) (27 March 1992) in support of his submission that the contribution to be made by each partner need not be of the same character, quantity or value.[10]

[20] The applicant has conveniently ignored what the court in *Pezutto* said in paragraph 34 of the judgment. The court said: 'However, each partner must contribute something "appreciable", i e, something of commercial value, although such contribution need not be capable of exact pecuniary assessment as, eg, where a partner contributes his labour or skill (Pothier: 1.3.9 and 10; *B v The Commissioner of Taxes 1958(1) PH T4 (SR)*).' This Court assessed the plaintiff's evidence and the alleged contribution he made to the partnership and found it insignificant. This Court found that the applicant could not equate delivering stock from Johannesburg on one or two occasions to Delareyville or attending at the Schweizer – Reneke Build It 'from time to time' with the first respondent and equate this to a contribution in labour and/or skill justifying the assertion that the applicant was a partner in the business.[11] The applicant, as

[10] Pezutto para 33.
[11] Para 64 of the judgment.

correctly submitted by counsel for the respondents, has failed to demonstrate any material misdirection in this Court's reasoning on this aspect.

[21] Regarding the monetary contribution, the evidence indicates it was made by Lydia Road CC, not the applicant personally. Lydia Road CC was not a party to the proceedings before this Court, and the applicant never claimed that Lydia Road CC was a party to the alleged partnership agreement. This finding, as correctly submitted by counsel for the respondent, has not been challenged by the applicant.

[22] On the second essential requirement of a partnership. This Court assessed the evidence of the applicant and referred to the particulars of the claim of the applicant. This Court found that, from the applicant's evidence, the establishment of the second respondent and the restructuring of the business were undertaken for the benefit of Lydia Road CC and to protect its assets, particularly the Build It stores in Delareyville and Gaanalaagte. This finding was supported by several features of the evidence of the applicant: (a) the businesses in question were conducted through separate juristic entities, namely the second, third and fourth respondents, which had their own banking arrangements; (b) the first respondent was the controlling party in those entities. This was conceded by the applicant in cross-examination, and there was no impediment to the applicant being registered as a shareholder in any of the entities, this was also conceded by the applicant in cross-examination; (c) the evidence of the applicant was that the alleged partnership did not have its own bank account, financial records, or tax returns, which are the usual indicators of a partnership enterprise conducted for the mutual benefit of its partners; (d) the evidence of the applicant showed that the applicant retained sole ownership of immovable properties and rental income which were never treated as partnership assets or shared with the first respondent.

[23] It is submitted on behalf of the applicant that this Court, in finding that the applicant failed to satisfy the second requirement of Pothier, is a clear reflection of final merits determination and goes directly against the threshold set in *Claude Neon Lights.* This Court did not resolve disputed factual issues on the final basis at the stage of the application for absolution from the instance. This Court assessed the applicant's evidence to determine whether the applicant had established the essential elements of a partnership. This Court found that the evidence of the applicant did not demonstrate that the alleged enterprise was conducted for the joint benefit of the applicant and the first respondent; this Court was entitled to conclude that the applicant failed to establish a *prima facie* case in respect of the second requirement of the essential requirements of a partnership as formulated by Pothier.

[24] This Court, in granting absolution from the instance, was fully aware of the *Claude Neon Lights* test. The court is *Claude Neon Lights* said the following as it relates to a test for absolution from the instance at the close of a plaintiff's case:

'…when absolution from the instance is sought at the close of plaintiff's case, the test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff.'[12]

[25] The court in *Gordon Lloyd Page & Associates v Rivera and Another*[13] referring to the test for absolution from the instance, as set out in *Claude Neo Lights,* said the following at paragraph 2 of the judgment:

[12] *Claude Neon Lights* at 409G-H.
[13] (384/98) [2000] ZASCA 33; 2001 (1) SA 88 (SCA); [2000] 4 All SA 241 (A) (31 August 2000).

‘This implies that a plaintiff has to make out a prima facie case - in the sense that there is evidence relating to all the elements of the claim - to survive absolution because without such evidence no court could find for the plaintiff…’

[26] This was the position, with the evidence in the applicant's case before this Court. The applicant's evidence failed to establish all the elements of the claim. As I stated above, the applicant failed to establish two essential elements of a partnership, and without establishing all of the essential elements, the applicant's case could not survive absolution.

[27] It is submitted by counsel for the respondents that the argument of the applicant ultimately amounts to no more than a disagreement with this Court’s evaluation of the evidence. Such disagreement does not establish misdirection in the application of the test for absolution from the instance. I agree with this submission.

**Conclusion**

[28] The applicant has failed to demonstrate that there are reasonable prospects that another court would come to a different conclusion from that reached by this Court. The applicant has further failed to demonstrate that there is some other compelling reason why the appeal should be heard. It follows that the application for leave to appeal should be refused.

**Costs**

[29] Costs follow the result, and I have not found any reason to deviate from this principle. As I indicated above, the notice was unnecessarily prolix, but the matter was not complex.

**Order**

[30] Resultantly, the following order is made.

1. The application for leave to appeal to the Full Court of the Division, alternatively to the Supreme Court of Appeal, is dismissed.

2. The applicant is ordered to pay the costs of the application for leave to appeal on a party and party scale, scale “B”.

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**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**

**NORTH WEST DIVISION, MAHIKENG**

**APPEARANCES**

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