

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
<u>31/7/2026</u>	
DATE	 SIGNATURE

CASE NO: 2024-136898

In the matter between:

DER ZUCKER BACKER (PTY) LTD

Applicant / Plaintiff

And

SHANI RAE INKACHI PARKER

First Respondent / Defendant

RONALD BENTON PARKER

Second Respondent / Defendant

JUDGMENT – LEAVE TO APPEAL

DREYER AJ:

- [1] This is an application by the Respondents for leave to appeal against the whole of the judgment and order granted by this Court on 28 April 2026. In terms of the order summary judgment was granted in favour of the Applicant against the Respondents.

The test for leave to appeal

- [2] The test for leave to appeal is set out in Section 17(1) of the Superior Courts Act 10 of 2013 ("the Act"). In terms of Section 17(1)(a) leave to appeal may only be given where the judge of judges concerned are of the opinion that:
- (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.
- [3] In the matter of *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 the Supreme Court of Appeal stated:

- [17] *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 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.*"
- [4] In the matter of *Notshokovu v State* [2016] ZASCA 112 the Supreme Court of Appeal stated that "*An appellant, on the other hand, faces a higher and stringent threshold in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959.*"

The Respondents' grounds of appeal

- [5] The Respondents' grounds for leave to appeal is set out in the Respondents' Application for Leave to Appeal dated 9 June 2026.
- [6] The judgment contains the reasons for the order handed down on 28 April 2026, and this Court need not elaborate in this regard.
- [7] This Court however deems it necessary to deal with the following grounds raised by the Respondents namely:
- 7.1 the Court erred in taking cognisance of and allowing the impermissible attaching of further evidence to the founding affidavit of the summary judgment application, which did not present in the particulars of claim.

- 7.2 the Court failed to give proper consideration to the fact that the Applicant had pleaded already in the particulars of claim as well as in the founding affidavit that at all times the First Respondent acted in her capacity as director of the Applicant, however, that such relief was sought against the First Respondent in her personal capacity in the absence of a finding in terms of Section 77 of the Companies Act 68 of 2008.
- [8] Rule 32(2)(b) requires that the Plaintiff shall explain briefly why the defence as pleaded does not raise any issue for trial.
- [9] In the matter of *Absa Bank Limited v Mashinini NO*. 2020 JDR 0124 (GP) the following was stated:

"3.11. The Rule as amended clearly did not envisage a mini-trial by the production of extensive facta probantia, but where, as in the present instance that which would have been a bare or bold denial can be refuted or, in the imprecise words of the amended Rule, "briefly" be explained by way of an annexed document or documents, that should in my view be allowed. To not do so would be to revert to the unsatisfactory position which was in existence prior to the amended Rule."

See also: *Absa Bank Ltd v Saunderson* 2024 (4) SA 552 (NCK) at paras 35 – 37 and *Peikko South Africa Ltd v JCO Construction (Pty) Ltd* 2025 JDR 3973 (GJ)

- [10] The evidence provided by the Applicant in the founding affidavit in this Court's view serves only to support the contentions by the Applicant as to why the defences as pleaded by the Respondents do not raise issues for trial.

- [11] On a perusal of the particulars of claim and the founding affidavit in support of summary judgment it is evident that same does not contain any averment by the Applicant that at all material times the First Respondent acted in her capacity as director of the Applicant, as contended for by the Respondents.

Conclusion

- [12] This Court has considered the grounds of appeal raised by the Respondents. Having done so, this Court is not persuaded that the Respondents have satisfied the test for leave to appeal as set out in Section 17(1) of the Act.
- [13] The Respondents have failed to demonstrate that there is a reasonable prospect of success on appeal, or that there are compelling reasons why the appeal should be heard.
- [14] This Court therefore makes the following order:
1. The application for leave to appeal is dismissed.
 2. The Respondents are to pay the party and party costs of the application on scale B.



E. DREYER

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date for hand down is deemed to be 31 July 2026.

Appearances:

Appearance for Applicant:

Instructed by:

Adv. XT van Niekerk

Lacante Attorneys Inc.

Appearance for Respondents:

Instructed by:

Adv. JA Steyn

Wright Rose-Innes Inc.

Date of hearing:

16 July 2026

Date of Judgment:

31 July 2026