



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO: 2026-122389

In the matter between:

AFRICAN NATIONAL CONGRESS

FIRST APPLICANT

FIKILE APRIL MBALULA

SECOND APPLICANT

**40 PERSONS APPOINTED TO CONSTITUTE
THE EASTERN CAPE PROVINCIAL TASK
TEAM AS LISTED IN ANNEXURE "A" TO THE
NOTICE OF MOTION**

THIRD APPLICANT

And

LWAZI ROTYA

FIRST RESPONDENT

SINETHEMBA MPANDE

SECOND RESPONDENT

NOMPUMELELO MZOTHTWA

THIRD RESPONDENT

JUDGMENT

Noncembu J

[1] The first and second applicants (hereinafter referred to as the ANC); and the third applicant (hereinafter referred to as the PTT)¹ have brought two separate applications for leave to appeal to the full court of this division, alternatively, the Supreme Court of Appeal, against the whole judgment and order of this court handed down on 18 June 2026. In addition, the ANC has lodged an application in terms of section 18 (2) of the Superior Courts Act,² where it seeks a declarator that the order granted by this court on 18 June 2026 is final, alternatively, and in the event the said order is viewed as interim relief, an order suspending the operation and execution thereof.

[2] The latter application was brought on an urgent basis and was initially set down for hearing on the motion court roll on 21 July 2026. Before the said date, however, Govindjee J issued a directive that the matter be heard before this court together with the application for leave to appeal, as it was apparent on the papers that the matter was contingent upon an application for leave to appeal being lodged, and that the parties had already agreed on a date of hearing for the

¹ Jointly referred to as the applicants.

² Superior Courts Act, 10 of 2013.

leave to appeal application. Both applications therefore were argued before me on 31 July 2027.

[3] Although the respondents had initially taken issue with the urgency of the section 18(2) application, this aspect was conceded during argument before court. I am also satisfied that the matter is urgent enough to warrant a hearing on an expedited basis and on truncated time periods, with condonation for non-compliance with the rules being granted.

[4] I propose to first deal with the question of appealability and the application for leave to appeal, as findings thereon will have a direct bearing on the outcome of the section 18(2) application.

Whether the order granted by this court on 18 June 2026 is appealable

[5] One of the issues arising in this matter is whether the order sought to be appealed against by the applicants is appealable. In the main application, this court granted, *inter alia*, the following relief which is the subject of the current applications:

‘2. An interim interdict is hereby granted, suspending the decision to appoint an interim Provincial Task Team in the Eastern Cape pending the final determination of the orders in paragraphs 3 to 8 below.

3. It is declared that the announcement of the appointment of the Provincial Task Team to replace the elected Provincial Executive Committee of the African National Congress in the Eastern Cape is:

- 3.1 unconstitutional (in breach of section 19 of the Constitution of the Republic of South Africa, 1996);
- 3.2 unlawful and in breach of the applicants' contractual rights as governed by the Constitution, rules, policies, and directives of the African National Congress ("ANC");
- 3.3 violates the ANC's Constitution and the ANC's guidelines for ANC Branch General Meetings, Branch Biennial General Meetings, Regional, Provincial, and National Conferences as adopted by the National Executive Committee; and
- 3.4 reviewed and set aside.
4. Any decision to recognize or give effect to the said announcement is declared to be invalid and is set aside.
5. The appointment of the fifth to forty-fourth respondents as members of the ANC Eastern Cape PTT is declared invalid, reviewed, and set aside.
6. All decisions taken by the fifth to forty-fourth respondents are declared unlawful, invalid, and of no force or effect.
7. The fifth to forty-fourth respondents are interdicted from holding themselves out as members of ANC Eastern Cape PTT.
8. The fifth to forty-fourth are interdicted from representing the Eastern Cape province in any structure, function, meeting, conference, or activity of the ANC at any level whatsoever.
9. Paragraphs 3 to 8 are to operate as an interim interdict pending the final determination of the matter.'

[6] The applicants contend that the orders, whilst explicitly stated to be interim, are in effect final. They base this on various reasons, which include the fact that: (a) there were no pending proceedings foreshadowed in the respondents' main application; (b) paragraph 3 of the order had the effect of reviewing and setting aside various decisions, which review was determined without a record and cannot be undone in later proceedings; (c) paragraph 6 finally determined the effect of decisions taken by the PTT, and cannot have its effect varied or amended at a later stage; and (d) although the court sought to

grant interim remedy, it granted declaratory rights, an order which is final in nature and in effect, and as such incapable of being granted on an interim basis.

[7] The respondents, on the other hand, contend that the order, as explicitly stated thereon, is interim and that nothing precludes the applicants from setting the matter down for its final determination. They contend thus that the matter is not appealable.

[8] There can be no question that the law is replete with authorities on the appealability of interim orders. In my view, the question for determination in the present matter is not about whether the order is final in effect, but rather, whether or not it is appealable. Below I deal with the authorities on which I base the said view.

[9] In *City of Tshwane Metropolitan v AfriForum and Another*³ the Constitutional Court held as follows in this regard:

‘Unlike before, appealability no longer depends largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the relief claimed in the main application. All this is now subsumed under the constitutional interests of justice standard. The over-arching role of interests of justice considerations has relativised the final effect of the order or the disposition of the

³ *City of Tshwane Metropolitan v AfriForum and Another* [2016] ZACC 19; 2016 (9) BCLR 1133 CC; 2016 (6) SA 279 (CC) 21 July 2016.

substantial portion of what is pending before the review court, in determining appealability. The principle was set out in *OUTA*⁴ by Moseneke DCJ in these terms:

“This Court has granted leave to appeal in relation to interim orders before. It has made it clear that the operative standard is ‘the interests of justice’. To that end, it must have regard to and weigh carefully all germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relevant and important consideration. Yet, it is not the only or always decisive consideration. It is just as important to assess whether the temporary restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable.”

[10] In *Phillips v SA Reserve Bank and Others*⁵ Farlam JA made the following remarks on the question of appealability of orders:

‘The question of appealability in a case such as this, where a party seeks to attack on appeal an order made in judicial proceedings which have not yet terminated, was discussed by Nugent JA in a judgment with which the other members of the court concurred in *National Director of Public Prosecutions v King*⁶, where he said the following:

“There will be few orders that significantly affect the rights of the parties concerned that will not be susceptible to correction by a court of appeal. In *Liberty Life Association of Africa Ltd v Niselow* (in another court), which was cited with approval by this court in *Beinash v Wixley*⁷ I observed that when the question arises whether an order is appealable what is most often being asked is not whether the order is capable of being corrected, but rather whether it should be corrected in isolation and before the proceedings have run their full course. I said that two competing principles come into play when that question is asked. On the one hand, justice would seem to require that every decision of a lower court should be capable not only of being corrected forthwith and before it has any consequences, while on the other hand the delay and

⁴ *National Treasury and others v Opposition to Urban Tolling Alliance and others* [2012] ZACC 18, 2012 (6) SA 223 (CC), 2012 (11) BCLR 1148 (CC).

⁵ *Phillips v SA Reserve Bank and Others* [2012] 2 All SA 532 (SCA) at 539 para 26.

⁶ [2010] ZASCA 8; BCLR 656 (SCA); 2010 (2) SACR 146 (SCA) [also reported at [2010] 3 All SA 304 (SCA) -Ed].

⁷ 1997 (3) SA 721 (SCA).

inconvenience that might result if every decision is subject to appeal as and when it is made might itself defeat the attainment of justice.”

In this case it was said on behalf of Mr King that the order is not appealable because it is interlocutory. **Whether that is its proper classification does not seem to me to be material. I pointed out in *Liberty Life* that while the classification of the order might at one time have been considered to be determinative of whether it is susceptible to an appeal, the approach that has been taken by the courts in more recent times has been increasingly flexible and pragmatic. It has been directed more to doing what is appropriate in the particular circumstances than to elevating the distinction between orders that are appealable and those that are not to one of principle. Even the features that were said in *Zweni v Minister of Law and Order* to be characteristic, in general, of orders that are appealable were later said by this court in *Moch v Nedtravel (Pty) Ltd* not to be exhaustive nor to cast the relevant principles in stone. As appears from the decision in *Moch*, the fact that the order is not 'definitive of the rights about which parties are contending in the main proceedings' and does not 'dispose of any relief claimed in respect thereof', which was one of the features that was said in *Zweni* to generally identify an appealable order, is far from decisive. ”** (Emphasis intended)

[11] The court went further⁸:

“The matter was further discussed in two recent decisions of this Court in *Health Professions Council of South Africa v Emergency Medical Supplies and Training CC t/a EMS* ⁹ and *Government of the RSA v Von Oho*¹⁰, where Snyders JA said:

“It is fair to say there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the rights of the parties, disposed of the substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice. “’

⁸ At para 27.

⁹ 2010 (6) SA 469 (SCA); [2010] 4 All SA 175 (SCA); [2010] 4 All SA 175 (SCA).

¹⁰ 2011 (5) SA 262 (SCA) at 270B - D para 17.

[12] The Constitutional Court in *United Democratic Movement and Another v Lebashe Investment Group*¹¹, stated the following on this issue:

‘Thus, an order which appears in form to be purely interlocutory will be appealable if its effect is such that it is final and definitive of any issue or portion thereof in the main action. By the same token, an order which might appear, according to its form, to be finally definitive in the above sense may, nevertheless, be purely interlocutory in effect.¹² Whether an order is purely interlocutory in effect depends on the relevant circumstances and factors of a particular case.’

[13] The court stated further:¹³

‘What is to be considered and is decisive in deciding whether a judgment is appealable, even if the *Zweni* requirements are not fully met, is the interests of justice of a particular case and whether or not an order lacking one or more of the factors set out in *Zweni* constitutes a “decision” for the purposes of section 16(1)(a) of the Superior Courts Act. Over and above the common law test, it is well established that an interim order may be appealed against if the interests of justice so dictate. It is thus in the interests of justice that the impugned interim interdict is appealable on the allegation that the interdictory relief in question resulted in the infringement of the right to freedom of expression.’

[14] In *Machele and Others v Mailula and Others*¹⁴, Skweyiya J, relying on what this Court held in *TAC*, reaffirmed the importance of “irreparable harm” as a factor in assessing whether to hear an appeal against an interim order, albeit an order of execution:

¹¹ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* [2022] ZACC 34; 2022 (12) BCLR 1521 (CC); 2023 (1) SA 353 (CC), para 41.

¹² *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 535G-536A; and *Metlika Trading Ltd v Commissioner for the South African Revenue Services* [2012] ZAGPPHC 360; 2012 JDR 1278 (GNP).

¹³ At para 45.

¹⁴ [2009] ZACC 7; 2010 (2) SA 257 (CC); 2009 (8) BCLR 767 (CC).

‘The primary consideration in determining whether it is in the interests of justice for a litigant to be granted leave to appeal against an interim order of execution is, therefore, whether irreparable harm would result if leave to appeal is not granted.’

[15] On a consideration of the factors stated in the above authorities, I am satisfied that the orders in the present matter are, on the application of the interests of justice principle, appealable. This then brings one to the question of whether the applicants have satisfied the test for leave to appeal.

Application for leave to appeal

[16] Both applicants (the ANC and the PTT) pin their case on the provisions of section 17(1) (a) of the Superior Courts Act¹⁵, which provides –

‘Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

- (a)(i) the appeal would have reasonable prospects of success;
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.’

[17] The test for leave to appeal is well established in our law. The Supreme Court of Appeal (SCA) in *MEC for Health, Eastern Cape v Mkhitha and Another (Mkhitha)*,¹⁶ expressed the test as follows:

‘An applicant 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

¹⁵ Act 10 of 2013.

¹⁶ *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 (25 November 2016).

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 *S v Smith (Smith)*,¹⁷ the SCA stated the following on the test:

‘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 than 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.’

[19] There is a case made for the proposition that the threshold for reasonable prospects of success has been raised in terms of the new Act. In this regard, Bertelsmann J, said the following in *Mont Chevaux Trust v Tina Goosen and 18 Others*¹⁸:

‘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 Cornwright & 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.’

¹⁷ *S v Smith* 2012 (1) SACR 567 (SCA).

¹⁸ *Mont Chevaux Trust v Tina Goosen and 18 Others* 2014 JDR 2325 (LCC) at para 6 (3 November 2014); see also *Van Wyk v S; Galela v S* [2014] ZASCA 152; 2015 (1) SACR 584 (SCA) para [14].

[20] Whether or not that is the case is not for this court to decide at this point. What is indisputable, though, is that there must be reasonable prospects of success, as contemplated in *Mkhitha* and in *Smith* referred to above, or compelling reasons why the appeal should be heard.

[21] Both applicants, as can be ascertained from their notices of motion, premise their applications on the requirement that there are reasonable prospects of success on appeal (section 17 (1) (a) (i)).

[22] To that extent, both applicants raise a number of grounds as a basis for asserting reasonable prospects of success on appeal. For the ANC, these include the fact that the court erred: by failing to consider material averments it made in support of its case; by incorrectly interpreting the ANC Constitution, specifically rule 12.2.4; by finding that the extract of the Minutes from the NEC meeting was *mala fide*; and in granting final relief styled as interim relief.

[23] For the PTT, the grounds mainly centred on the court's misdirection in granting declaratory relief as an interim interdict; in granting a review order as an interim interdict and in granting both interim and final relief in the same application. The PTT also contended that no case was made for either interim or final relief as materially disputed facts stood in the way.

[24] As a starting point, I find it quite telling that the PTT takes no issue with the court's findings on the merits of the matter. Its attack on the judgment revolves mainly on the nature of the orders made by this court and their effect. The argument raised in this regard is that because of the final nature of the orders styled as interim relief, the court applied an incorrect test when it should have applied the Plascon-Evans test.

[25] The difficulty I have with this argument is that it refers to material disputes of fact which were in existence in the matter, and yet fails to state what those disputes of fact are. The true state of the matter, however, is that there were no real disputes of fact that arose in the matter, as the matter was decided solely on the interpretation of the ANC Constitution. The question that had to be decided was whether the ANC had met the jurisdictional requirements for the installation of the PTT. The applicability of the Plascon-Evans test or any other test, for that matter, did not arise.

[26] On a similar vein, the ANC contends that the court failed to consider its material averments and decided the matter on the deficiencies in the PTT's version. This cannot be further from the truth. The deficiencies the court referred to concerned the PTT's version vis-à-vis that of the ANC, as well as the deficiencies/contradictions inherent in the ANC's version on its own, as both

these parties were opposing the application and both were party to the events leading to the installation of the PTT.

[27] The material facts which were not in dispute in the matter were that the PEC was never dissolved (in fact both the ANC and the PTT maintained this version), as both contended that dissolution was not necessary as the PEC's term of office had been terminated by the effluxion of time. This was notwithstanding the ANC later contradicting itself in this regard by contending (through the later presented extract of the NEC minutes) that the PEC was dissolved. Needless to say, the court accepted their earlier version in this regard, which version was also corroborated by the PTT.

[28] As is evident from above, there were no material contradictions of fact between the version of the applicants (the ANC and the PTT) and those of the respondents. The matter and the ultimate judgment of the court turned on the interpretation of Rule 12.2.4 of the ANC Constitution, as both the respondents and the ANC contended that the ANC had exercised powers vested upon it by the said provision when it installed the PTT.

[29] This court notes the attempt by the ANC to recast their case in the leave to appeal application by stating that it was necessary for the PTT to be installed as the PEC was dysfunctional. That, unfortunately, was not the case they

presented in the main application and therefore cannot be raised for the first time in the leave to appeal application.

[30] The other grounds raised by the ANC in its application have been dealt with extensively in the judgment on the main application; they will therefore not be rehashed in this judgment. Suffice it to say that the remaining grounds, specifically, the probative value of the extract of the minutes of the NEC meeting, pertain to remarks made in obiter by the court, and do not in any way present the ratio for the court in coming to its decision.

[31] The remarks were specifically intended to show the inconsistencies in the ANC's own version. The ultimate ruling of the court was premised on the finding that the ANC had failed to satisfy the jurisdictional requirements for the appointment of the PTT as provided for in rule 12.2.4 of its Constitution. This, inevitably, entailed the interpretation of the said provision.

[32] On the aspect of the court granting review relief in the absence of a record in the matter, it is not clear to me how that avails the ANC or the applicants in the matter. All the parties were afforded the opportunity to file their papers in the matter, and the issues were fully ventilated and canvassed before the court. Furthermore, it is a trite principle that a record in such proceedings is for the benefit of the applicant (respondents in the present case).

The respondents had all the information they needed to fully present and argue their case, and as already stated, the matter turned solely on the interpretation of the ANC Constitution, an aspect for which the record would have had no bearing, the facts having either been common cause or not in dispute.

[33] There is also no basis for the unsubstantiated claim made by the PTT that no case was made for either interim or final relief in the matter. As to the nature and effect of the orders, I have already stated above what I view as the relevance thereof. Having found in that regard that the matter is appealable, nothing more needs to be said on the issue.

[34] Taking into account all that has been stated above, I am unable to find that the applicants have satisfied the test of establishing reasonable prospects of success on appeal in the matter. On that basis therefore, both applications for leave to appeal must fail.

Section 18(2) Application

[35] Having found as I did in the preceding paragraph, it follows that the section 18(2) application falls to be dismissed with costs because, by its nature, it is contingent on the leave to appeal being granted.

Costs

[36] There is no reason why the general rule, that costs follow the event, should not apply in the present matters.

Order

[37] In the result, the following orders are made:

(a) The two applications for leave to appeal (by the ANC and the PTT respectively) are dismissed with costs.

(b) The section 18(2) application is dismissed with costs.

V P NONCEMBU
JUDGE OF THE HIGH COURT

APPEARANCES

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Date of hearing : 31 July 2026

Date judgment delivered : 6 August 2026