



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: A04/2026

In the matter between:

THE PRESIDING OFFICER OF THE TRIBUNAL

First Applicant

(Constituted in terms of section 91 (2) of Act 130 of 1993)

THE WORKMEN'S COMPENSATION

Second Applicant

COMMISSIONER

THE DIRECTOR GENERAL OF

Third Applicant

THE DEPARTMENT OF LABOUR

THE MINISTER OF LABOUR

Fourth

Applicant

and

PERCIVAL PRETORIUS

Respondent

Coram: Slingers J et Mphego AJ

Heard: 29 July 2026

Delivered: 19 August 2026

Summary: Application for leave to appeal a judgment of two judges that presided over an appeal in terms of section 91 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 – application for leave to appeal to the Supreme Court of Appeal in terms of section 16(1)(b) and 17(3) of the Superior Courts Act 10 of 2013.

ORDER

1. The point *in limine* is upheld.
2. The application for leave to appeal is struck from the roll with costs, which costs shall be on scale C and shall include the costs of two counsel where so employed.
3. The applicants may approach the Supreme Court of Appeal for special leave to appeal.

JUDGMENT

Slingers J et Mphego AJ:

INTRODUCTION AND BACKGROUND

- [1] This is an application for leave to appeal against the judgment handed down on 8 June 2025.
- [2] The procedural history, briefly stated, is as follows. The Respondent brought an appeal to this Court under section 91 (**‘the appeal’**) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (**‘COIDA’**) against a

decision of the Tribunal (constituted in terms of section 91(2) of COIDA) dated 26 November 2025.

- [3] The appeal was heard by this Court and on 8 June 2026, this Court handed down judgment upholding the Respondent's appeal. The following order was made:

'(a) the appeal is upheld and the decision of the tribunal (tribunal) dated 26 November 2025 that the appellant's permanent disablement remains at 21 %, is set aside;

(b) the appellant's total permanent disablement is declared to be 100%;

(c) the costs of the appeal, including the costs of proceedings before the tribunal shall be paid by the respondents, jointly and severally, one paying to absolve the other. Such costs shall be costs on an attorney client scale, including the costs of the preparation of heads of argument and shall include the costs of two counsel where so employed.'

- [4] On 19 June 2026, the Applicants filed a notice of application for leave to appeal the judgment of 8 June 2026. The application seeks leave to appeal to the Supreme Court of Appeal (**'the SCA'**), alternatively to a Full Bench of this Division.

- [5] The Respondent, through his counsel advocate Rabie, raised a point *in limine* contending that this Court lacks jurisdiction to entertain the application for leave to appeal. The Respondent submits that this Court sat as a court of appeal in the section 91 COIDA proceedings and that, accordingly, any further appeal lies to the SCA upon special leave granted by the SCA itself, in terms of section 16(1)(b) read with section 17(3) of the Superior Courts Act 10 of 2013 (**'the Superior Courts Act'**).

- [6] Should the point in limine be upheld, then this Court would not have the jurisdiction to entertain the application for leave to appeal and that would be the end of the matter. Should the point *in limine* be dismissed, the merits of the application for leave to appeal would be determined.

SUBMISSIONS OF THE PARTIES

The Respondent's submissions

[7] Advocate Rabie's submissions on behalf of the respondent can be summarised as follows:

- (a) Section 16(1)(b) of the Superior Courts Act provides unambiguously that an appeal against any decision of a Division on appeal to it lies to the SCA upon special leave having been granted by the SCA.
- (b) Section 17(3) provides that an application for special leave to appeal under section 16(1)(b) may be granted by the SCA on application filed with the registrar of that court within one month after the decision sought to be appealed against.
- (c) The *court a quo* (consisting of two judges) sat as a court of appeal and handed down its judgment in that capacity.
- (d) It is clear from these legislative provisions that the Applicants are in the wrong forum and should have brought their application to the SCA.
- (e) The application should accordingly be dismissed with costs on this basis alone.

The Applicants' submissions

[8] Advocate Masuku SC's submissions for the applicants may be summarised as follows:

- a) This Court sat as a court of first instance as envisaged in the Superior Courts Act, not as a court of appeal. COIDA does not

prescribe a full court or an appeal court, it merely refers to “any provincial or local division of the Supreme Court having jurisdiction.” This means the appeal could have been heard by a single judge, which would attract section 16(1)(a)(i).

- b) The word “appeal” in section 91 does not necessarily import the appellate architecture of sections 16 and 17 of the Superior Courts Act.
- c) Mr Masuku SC relies on *South African Rugby Football Union v President of the Republic of South Africa* and *Pharmaceutical Manufacturers Association of South Africa: In re ex parte President of the Republic of South Africa* 2000 (2) SA 674 (CC), for the proposition that substance prevails over nomenclature.
- d) COIDA creates a specialised statutory supervisory jurisdiction, not an ordinary appeal. The function performed by the High Court is akin to a review, notwithstanding the statutory label of “appeal.”
- e) The Respondent’s construction creates internal inconsistency because the court cannot simultaneously be an ordinary appeal court under the Superior Courts Act whilst being constituted differently (two judges rather than the three required for a Full Court).
- f) Parliament did not expressly abolish the ordinary leave procedure. In the absence of express exclusion, the Applicants retain the right to apply to this Court for leave.
- g) Even if section 16(1)(b) of the Superior Court Act applies, dismissal does not follow and the Applicants should be permitted to redirect their application to the SCA, rather than suffer the consequence of dismissal.
- h) Advocate Masuku SC relied on section 173 of the Constitution which provides that the Court has inherent power to regulate its process and section 34 dealing with the right to access to the courts, he also referred to *Mankayi v AngloGold Ashanti Ltd* and

Bertie Van Zyl (Pty) Ltd v Minister for Safety and Security for the principle that procedural rules should not frustrate access to justice.

JURISDICTION OF THE HIGH COURT UNDER COIDA

[9] It is common cause that this Court's jurisdiction to hear the Respondent's appeal derived from section 91(5)(a) of COIDA. Section 91(5) provides, insofar as is material:

'Any person affected by a decision referred to in subsection (3)(a), may appeal to any provincial or local division of the Supreme Court having jurisdiction against a decision regarding—

(i) interpretation of this Act or any law,

(ii) the question whether an accident causing disablement or death of an employee was attributable to his serious and wilful misconduct,

(iii) the question whether the amount of compensation awarded is excessive or so inadequate that the award thereof could not reasonably have been made,

(iv) the right to increased compensation in terms of section 56.'

[10] There was no dispute between the parties that this Court enjoyed jurisdiction to hear the appeal.

[11] The critical question, however, is the *capacity* in which this Court sat when hearing that appeal that is, whether this Court sat as a court of first instance or as a court of appeal. The answer to this question determines the appellate route of this matter.

[12] In *Ngubane v Department of Employment and Labour and Another* (A107/2024) [2025] ZAGPPHC 1345 (18 November 2025), the court stated at paragraph [3]:

'From a perusal of the findings of the Compensation Commissioner, read together with the Notice of Appeal it is clear this court, sitting as a court of appeal, is called upon to consider whether the all the evidence available to the Compensation Commissioner were considered alternatively properly considered and if such evidence supports the finding of the Compensation Commissioner.'

- [13] Similarly, in *Bent v Rand Mutual Assurance (Pty) Ltd (Appeal)* (A120/2025) [2025] ZAGPPHC 1328 (9 December 2025), the court stated at paragraph [2]:

'This court has jurisdiction to hear the appeal as it relates to and turns on the interpretation of the provisions of the Act as contemplated by section 91(5)(a)(i). There is no dispute between the parties that indeed this court enjoys jurisdiction to hear the appeal. This court is a High Court as envisaged by section 6(1) of the Superior Court Act.'

- [14] Of particular significance is the characterisation adopted by the SCA itself. In *Compensation Commissioner v Mankayi* [2022] ZASCA 38, the SCA stated at paragraph [2]:

'The appellant, the Compensation Commissioner (the Commissioner), has appealed against a judgment of the North Gauteng Division of the High Court, Pretoria (Leso AJ with Baqwa J concurring) (the high court), sitting as a court of appeal, in terms of s 91(5) of COIDA.'

- [15] This characterisation by the SCA, describing the High Court in section 91(5) proceedings as “sitting as a court of appeal” is, in our view, determinative. It is binding on this Court and reflects the nature of the jurisdiction of this Court as an appellate Court.

- [16] The Respondent also referred this Court to *National Credit Regulator v Lewis Stores (Pty) Ltd and Another*. That decision concerned the appellate route from a decision of the National Consumer Tribunal. In that statutory context, the SCA held that leave to appeal against the High Court’s decision had to be obtained

from the High Court, because the High Court was to be regarded as having sat as a court of first instance. The Respondent submitted, however, that *Lewis Stores* is distinguishable: it turned on the particular wording and structure of the National Credit Act and does not establish a general rule that every statutory appeal to the High Court is to be treated as a first instance proceeding.

[17] The Supreme Court of Appeal in *National Credit Regulator v Lewis Stores (Pty) Ltd and Another* noted that certain statutes such as the Patents Act 57 of 1978 and the Copyright Act 98 of 1978 provide how an appeal is to be noted and prosecuted. COIDA is a further example of a statute that provides how an appeal is to be noted and prosecuted. Section 91(5)(b) expressly provides that such an appeal shall be noted and prosecuted as if it were an appeal against a judgment of a magistrates' court in a civil case and all rules applicable to such an appeal shall *mutatis mutandis* apply." In our view, Parliament's deliberate legislative choice to equate the procedure with a magistrates' court appeal is instructive.

[18] COIDA's section 91(5)(b) expressly equates the section 91 appeal procedure with that of an appeal from a magistrates' court. Appeals from magistrates' courts to the High Court clearly fall within section 16(1)(b), which is confirmed in *Matamela*. The same consequence must follow in respect of COIDA section 91(5) proceedings.

[19] In hearing the appeal, this Court did not exercise original jurisdiction but sat as a court of appeal. Furthermore, this Court cannot ignore the provisions of section 91(5)(b) of COIDA.

THE APPELLATE ROUTE

[20] Sections 16 and 17 of the Superior Courts Act govern the route of appeal from the High Court. Section 16(1) provides, insofar as is relevant:

‘(1) Subject to section 15(1), the Constitution and any other law—

(a) an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted—

(i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of section 17(6); or

(ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;

(b) an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal;’

[21] Section 17(3) provides:

‘An application for special leave to appeal under section 16(1)(b) may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after the decision sought to be appealed against, or such longer period as may on good cause be allowed, and the provisions of subsection (2)(c) to (f) shall apply with the changes required by the context.’

[22] The statutory scheme is clear. Section 16(1)(a) applies where the High Court has sat as a court of first instance. Section 16(1)(b) applies where the High Court has sat as a court of appeal. In the latter instance, any further appeal lies to the SCA upon special leave granted by the SCA itself.

[23] This Court sat as a court of appeal in hearing the Respondent’s section 91(5) appeal, and not as a court of first instance. Therefore, section 16(1)(a) does not apply. Section 16(1)(b) is the applicable provision. It follows that this Court does not have jurisdiction to grant leave to appeal its own judgment in these circumstances. The leave to appeal must be sought directly from the SCA.

[24] In *Matamela*, the SCA struck the matter from its roll where leave had been wrongly granted by the High Court without proper regard to section 16(1)(b).

That decision confirms that the distinction between section 16(1)(a) and section 16(1)(b) is jurisdictional and not merely procedural.

DECISION ON THE POINT IN LIMINE

[25] Having considered the submissions of both parties and the applicable authorities, we are satisfied that the point in limine must be upheld.

COSTS

[26] The following order is made:

1. The point *in limine* is upheld.
2. The application for leave to appeal is struck from the roll with costs, which costs shall be on scale C and shall include the costs of two counsel where so employed.
3. The applicants may approach the Supreme Court of Appeal for special leave to appeal.

Judge of the High Court
HM Slingers

Acting Judge of the High Court
R Mphego

APPEARANCE

For the Applicant/s: Adv T Masuku SC with Adv L Moahloli

As Instructed by: State Attorney, Cape Town

For the Respondent: Adv PJ Rabie with Adv. P Coston

Instructed by: KG Kemp Attorneys