

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-082263

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

27/08/2026



In the matter between:

LARRY FAZEL VARRIE

APPLICANT

And

NEDBANK LIMITED

RESPONDENT

JUDGMENT- LEAVE TO APPEAL

JOHNSON, AJ

Introduction

[1] This is an application for leave to appeal the judgment handed down on 10 July 2026, dismissing an application for the extension to file a plea in terms Rule 27(1) of the Uniform Rules of Court.

[2] Mr Durandt on behalf the respondent made submissions opposing the application.

[3] The applicant raised numerous grounds for leave to appeal and made submissions in support thereof.

[4] I have considered the grounds for leave to appeal and the submissions made in support and in opposition thereof. The applicant filed a comprehensive application. I have perused and considered all the papers and submissions.

The test for leave to appeal:

[5] It is a trite principle of our law that leave to appeal may only be granted where, a Judge or Judge's concerned is/are of the opinion that the appeal would have a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. Section 17(1)(a)(i) and (ii) of the Superior Courts Act¹

[6] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect of success on appeal. The test indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

[7] It is further trite that the first respondent, who seeks leave to appeal must convince the court a quo that it has reasonable prospects of success on appeal.

[8] A reasonable prospect of success means a realistic chance of success on appeal: there must be a sound, rational basis for the conclusion that another court could reasonably arrive at a different conclusion. The mere possibility of success, or an arguable case, is not enough; but equally, certainty of success is not required².

¹ 10 of 2013

² MEC for Health, Eastern Cape v Mkhitha [2026] ZASCA 176 para 16-17; Ramakatsa and Others v African National Congress and Another [2021] ZASCA 31 para 10.

[9] Section 17(1)(a)(i), has raised the previous threshold of the test to determine whether leave to appeal should be granted. An applicant for leave to appeal now has to show that there 'would' not 'could' be a reasonable prospect of success on appeal³

[10] The grounds advanced by the applicant for leave to appeal:

10.1 Denial of access to the record of the proceedings.

10.2 Gross irregularity: Dismissal of the recusal application without a fair opportunity to be heard.

10.3 Material dispute as to the court characterisation of applicants conduct.

10.4 Misdirection in the exercise of discretion under rule 27(1): the merits of condonation.

10.5 other compelling reason within the meaning of section 17(1)(a)(ii) of the Superior Courts Act.

In terms of Section 17(1)(a)(ii) - some other compelling reason:

(1) The courts obligation to facilitate a self -represented person's access to the record of proceedings for appeal purposes.

(2) The proper approach to be adopted when a litigant in person raises an apprehension of bias.

Applicable legal principles:

[11] In **Take and Save Trading CC and Others vs Standard Bank of SA Ltd**

⁴, the SCA considered an appeal against the refusal of a trial judge to recuse himself. Two important principles emerged from the judgment. The first is a

³ Metro Lifestyle Centre (Pty) Ltd and another v Hassim and others [2018] JOL 39892 (GP); Acting National Director of Public Prosecution and Others v Democratic Alliance In Re: Democratic Alliance v National Director of Public Prosecutions and others [2016] JOL 36123 (GP)

⁴ 2004(4) SA 1 (SCA)

proper understanding of a judge's role in civil proceedings. Harms JA for a unanimous bench found:

"A judge is not simply a silent umpire. A judge is not a mere umpire to answer the question "How is that" Lord denning once said. Fairness of Court proceedings require of the trier to be actively involved in the management of the trial to control the proceedings to ensure that public and private resources are not wasted to point out and when evidence is irrelevant and to refuse to listen to irrelevant evidence. A supine approach towards litigation by judicial officers is not justifiable either in terms of the fair trial requirement or in the context of resources."

[12] Pulinger AJ in **Chung-Fung (Pty) Ltd vs Mayfair Residents Association**⁵ at para 32, held:

'I believe with respect to the imminent judge of appeal the role of a judge goes further than that. A judge is obliged to put his/her difficulties with a litigant's case to its representatives so that they may be afforded an opportunity to address it, lest a decision is made against a party without them having had the benefit of addressing that issue. This to me is an inextricable part of the right to a fair hearing as guaranteed by section 34 of the Constitution".

[13] In **Take and Save Trading** the court further held:

"As Mr Shaw rightly accepted, a deadly legal point forcefully made by the Court during argument cannot give rise to an apprehension of bias in the eye of the reasonable, objective and informed litigants in possession of correct facts."

[14] The Court in **Chung -Fung** at paragraph 34, in agreement with Harms JA held:

⁵ case number 2023/080436 heard on 13 October 2023GSJ at para 32, held:

“Therefore, when a Court that puts a proposition to a party with which the party does not agree and a robust debate ensues, that on its own cannot give rise to a reasonable apprehension of bias. “

[15] The Constitutional Court in **Benert vs ABSA Bank Ltd**⁶ expressed a similar sentiment when it held:

“The presumption of impartiality and the double requirements of reasonableness underscore the formidable nature of the burden resting on a litigant who alleges bias or it’s apprehension. The idea is not to permit a disgruntled litigant to successfully complain of bias simply because the judicial officer had ruled against him or her. Nor should litigants be encouraged to believe that by seeking the disqualification of a judicial officer, they will have their case heard by another judicial officer who is likely to decide the case in their favour. Judicial officers have a duty to sit in all cases in which they are not disqualified from sitting. This flows from their duty to exercise their judicial functions. As has been rightly observed “Judges do not choose their cases and litigants do not choose their judges.” An application for recusal should not prevail unless it is based on substantial grounds for contending a reasonable apprehension of bias.”

[16] The applicant was questioned by the court regarding the reasons for his non-compliance with the rules and the delay in filing his plea. During his address he was asked questions. The oral submissions made by the applicant and the submissions made in his extensive heads of argument were considered and addressed in my judgment extensively.

[17] During his address he stated that the court was confusing him by interrupting his argument and that he could not continue as the questions were intimidating. He then requested my recusal. Counsel for the respondent submitted that the court was entitled to ask relevant questions and that there was nothing untoward regarding the questions being asked by the court. The applicant submitted that the reason for his request for my recusal was that the questions being asked were confusing and intimidating him and that he could

⁶ 2011 (3) SA 92 CC

not continue in his address. This was the sole reason advanced for his request for my recusal. The applicant was given several opportunities to proceed with his submissions but persisted with his request for my recusal based solely on the fact that the questions were confusing and intimidating. In the circumstances, I was of the view that the questions being asked were relevant to the issues to be determined and the application for my recusal was not based on substantial grounds for any contention of a reasonable apprehension of bias. Accordingly, the application by the applicant for my recusal was dismissed. After I enquired from the applicant if he had any further oral submissions, it was also explained to him that the matter could be determined on the papers before court. He refused to proceed with submissions and asked to obtain the record. I explained that he was at liberty to do so and that he might be asked to pay a fee. After hearing submissions from the respondent and the applicant's refusal to address the court further the matter was adjourned and determined on the papers.

[18] The applicant was given a fair opportunity to articulate the reasons for his request for my recusal which he gave as set out above. The applicant advanced no valid basis or substantiation and has not shown bias for the application for recusal. This aspect was dealt with fully in paragraphs [25], [26] and [27] of my judgment. Accordingly, ground 1 for leave to appeal has no prospects of success on appeal.

[19] The applicant was given several opportunities to advance reasons for the application for recusal which he did as already stated in the judgment at paragraphs [25], [25] and [27] and in paragraphs [16] and [17] above. Accordingly, there are no prospects of success on appeal.

[20] Ground 3, has been addressed in the judgment and there is no prospect of success on appeal.

[21] Ground 4: The applicant and respondent filed affidavits and heads of argument on the merits for the rule 27(1) application. Submissions were heard and considered. These were comprehensively dealt with in the judgement and

the reason's therefore, in particular paragraph [36], [37], [38], [39], [40], [41] and [42]. Accordingly, there are no prospects of success on appeal.

[22] Ground 5: In terms of Section 17(1)(a)(ii) of the Superior Courts Act there are no other compelling reasons for another court to hear the appeal.

Is an interlocutory application such as an application in terms of rule 27(1) appealable:

[23] Section 18(2) of the Superior Courts Act 10 of 2013 states as follows:

“(2) Subject to subsection (3), unless a court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment which is the subject of an application for leave to appeal, is not suspended pending the decision of the application or the appeal.”

[24] An interlocutory order does not have the effect of a final judgment and the application for leave to appeal does not suspend the order unless a competent court orders otherwise in exceptional circumstances. In *Ewels v Francis*,⁷ which is useful and persuasive authority in opposition to leave to appeal against a procedural interlocutory order. This decision applies, synthesises and relies on the controlling appellate authorities on appealability, such as *Zweni v Minister of Law and Order*,⁸ *Neotel (Pty) Ltd v Telkom SA SOC Ltd*,⁹ *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd*¹⁰, *Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV Smart*¹¹ and *Government of the Republic of South Africa v Von Abo*.¹² *Ewels* applies binding SCA and Constitutional Court authority, and the reasoning is analogous to an order refusing removal and allocating a matter to argument. An order dismissing the applicant's application for a rule 27(1) extension to file a plea in 180 days and ordering him to file a plea in 20 days is not a final order. It does not determine substantive rights, disposes of no relief in the main application, and does not finally determine any issue between the parties and is therefore

⁷ (6497/2022) [2025] ZAWCHC 113.

⁸ [1992] ZASCA 197; [1993] 1 All SA 365 (A); 1993 (1) SA 523 (A).

⁹ (605/2016) [2017] ZASCA 47.

¹⁰ [2023] ZASCA 63; 2023 (5) SA 163 (SCA); HJ v PJ [2024] ZASCA 55.

¹¹ [2024] ZASCA. 129; [2025] 1 All SA 60 (SCA); 2025 1 SA 392 (SCA).

¹² [2011] ZASCA 65; (2011 (5) SA 262 (SCA); [2011] 3 All SA 261 (SCA).

not appealable. Alternatively leave should be refused because the proposed appeal would be dilatory, piecemeal and inconsistent with the just and prompt resolution of the real dispute. In *Zweni*, an order is generally appealable if it is final in effect, definitive of rights and disposes of a substantial portion of the relief claimed in the main proceedings. A mere ruling by contrast is ordinarily the antithesis of a judgment or order because it lacks finality and does not dispose of the real dispute. In *HJ v PJ*, the SCA held that a discovery related interlocutory order was purely interlocutory, lacked final effect and was consequently, not appealable. Evlens relied on *Minmetals* for the principle that piecemeal appeals are generally inimical to the interests of justice.

[25] In *Zweni v Minister of Law and Order*,¹³ the triad test is the foundational test on appealability. An appealable order is generally:

- 22.1 final in effect and not susceptible to alteration by the court of first instance;
- 22.2 definitive of rights of the parties;
- 22.3 dispositive of at least a substantial portion of the relief claimed in the main proceedings.

[26] In the result, the application for leave to appeal has no merit or prospects of success in terms of section 17(1)(a)(i) of the Supreme Court Act and there are no compelling reasons for the appeal to be heard in terms of section 17(1)(a)(ii) of the Supreme Court Act.

[27] Accordingly, the following order is made:

Order:

1. The application for leave to appeal is dismissed with costs.

¹³ [1992] ZASCA 197; [1993] 1 All SA 365 (A); 1993 (1) SA 523 (A).



S JOHNSON

Acting Judge of the High Court

Appearances

For the Appellants : JJ Durandt
Instructed : Mr NH Georgiades

For the Respondent : In person

Date of hearing :26 August 2026
Date of Judgement :27 August 2026

