



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

CASE NO: 2026-012641

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

21 August 2026

Date

K. La M Manamela

In the matter between:

LINBURG ENGINEERING (PTY) LTD

Applicant

and

URSULA MOELA

Respondent

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be 21 August 2026.

**JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)**

Manamela, J

Introduction

[1] This is an application for leave to appeal ('Leave to Appeal') against a judgment handed down or order made on 17 March 2026 dismissing an urgent application by Linburg Engineering ('the applicant') against Ms Ursula Moela ('the respondent') with punitive costs ('Judgment'). The applicant is an engineering private company based in Heidelberg, Johannesburg and the respondent is its former employee. She left the employ of the applicant in December 2025. She now works for Vallard Bearings ('Vallard') also an engineering firm based in Jet Park, Boksburg.

[2] The applicant had approached the Court on an urgent basis complaining that the respondent was in breach of an interim order the applicant had obtained on an *ex parte* basis earlier in January 2026 ('the main application'). The interim order in the main application was granted by Bredenkamp AJ in favour of the applicant on 27 January 2026 ('the Order'). In terms of the Order the respondent was interdicted from, among others, directly or indirectly using, disclosing or exploiting in any manner the applicant's confidential information; using such information or trade secrets to unlawfully compete with the applicant, and soliciting or approaching any of the customers or clients of the applicant. The interdict in terms of the Order was to be in force until the return date of the *rule nisi* ('an order of court to which a fixed period of validity has been assigned; when that period of validity has once expired the rule lapses')¹ issued by the Court on 30 March 2026. The return date has since been extended a couple of times. The Court was also informed that there was to be a further extension of the *rule nisi* when the matter was to be heard on 8 June 2026, a few days after the hearing of this Leave to Appeal.

¹ RC Claassen and M Claassen, *Claassen's Dictionary of Legal Words and Phrases* (LexisNexis 2024).

[3] Dissatisfied with the outcome the applicant launched this Leave to Appeal against the whole of the Judgment on 3 June 2026 citing the grounds for the intended appeal, set out below.² Leave to Appeal is sought to either a full court of this Division or the Supreme Court of Appeal. It is opposed by the respondent.

[4] The Leave to Appeal was heard on 4 June 2026 through a virtual or remote link. Mr JH Sullivan appeared for the applicant and Ms Y Omar appeared for the respondent. This judgment was reserved after listening to oral submissions by counsel.

Grounds of appeal

[5] The applicant advanced quite extensive grounds in the Leave to Appeal, some of which are to do with the reasoning of the Court rather than the substantial orders made by the Court.³

[6] A summarised version of the applicant's grounds in the Leave to Appeal is that the Court erred in one or more of the following respects:

[6.1] after referring in paragraphs [28]-[29] of the Judgment to the decision of the Constitutional Court in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* ('*Secretary of State Capture Commission v Zuma II*')⁴ and correctly identifying the applicable principles relating to contempt of court applications the Court misapplied the principles by: (a) finding that the respondent, as the contemnor, did not fail to comply with the Order when the Court ought to have

² Pars [5]-[7] below.

³ Par [13] below.

⁴ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* (CCT 52/21) [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC) (29 June 2021).

found that on the facts in the matter the elements for contempt of court were met by the applicant; and (b) by not finding that once the elements for contempt of court were established, willfulness and *mala fides* are presumed and that it would have been up to the respondent to establish a reasonable doubt, which the respondent, in fact, failed to do.

[6.2] by concluding in paragraph [45] of the Judgment that in the absence of satisfaction of all of the elements of contempt, there is no presumption of willfulness and *mala fides* on the part of the respondent and, thus, the application should be dismissed, when the Court had grappled (in paragraphs [39]-[45] of the Judgment) with the question whether or not the respondent failed to comply with the Order and referred to various incidents in the evidence, but the Court in paragraph [43] still ruled that ‘there is no proof that the respondent is guilty of any of these activities or conduct’.⁵ In reaching this conclusion the Court erred in one or more of the following respects:

[6.2.1] by effectively holding that the Order did not prohibit the conduct set out in the papers before the Court, which conclusion amount to construing terms 3.1.3 and 4 of the Order ‘too narrowly’;

[6.2.2] by not determining the matter on the basis of the ‘independent meaning, effect and application’ of term 3.1.3 of the Order that subsequent to service of the Order the respondent was interdicted in terms of the Order and the impugned conduct ‘is sufficiently covered by the width’ of the Order;

⁵ Judgment par [43], CaseLines (‘CL’) 00-15 to 16.

[6.2.3] by not treating ‘possession and peddling of information as an indispensable prerequisite for every form of breach of the [Order] as alleged by the [a]pplicant, notwithstanding the broader wording and application of clause 3.1.3 thereof’;

[6.2.4] by approaching the matter ‘in a manner that essentially and effectively revisited the commercial rationale’ of the Order instead of a focus and determination whether the respondent’s conduct breached the Order;

[6.2.5] by failing to hold that the cumulative effect of: (i) the facts in the papers before the Court; (ii) the admissions by the respondent that she contacted the applicant’s clients after service of the Order upon her; (iii) her employment by Vallard, and (iv) the alleged dealings with entities associated with the applicant, was sufficient to establish a *prima facie* failure to comply with the Order, particularly terms 3.1.3 and 4 thereof when widely construed, in terms of which approach the elements of contempt of court would have been established and with the respondent called upon to satisfactorily rebut the evidentiary burden that would have become saddled upon her;

[6.2.6] by failing to attach due weight to the Order in as far as it directed that the respondent cease and desist from unlawfully competing with the applicant and considering the Order and term 4 thereof sufficient in reach to restrain the conduct set out in the papers before the Court including the admission by the respondent that she contacted the applicant’s clients; and

[6.2.7] by a reasoning in paragraphs [39]-[45] of the Judgment that conflated the requirements for unlawful competition based on confidential information with those individually and independently prohibited in terms of term 3.1.3 of the Order and, thus imposing additional requirements to do with possession or misuse of confidential information beyond the terms of the Order.

[6.3] by awarding punitive costs against the applicant, as reasoned in paragraphs [46] and [47] of the Judgment, when the applicant approached the Court to enforce a pre-existing valid and binding Order and had raised an arguable case on the wording of the Order. This constitutes an unjustified exercise of the discretion of the Court against the applicant not based on facts, as the Court ought to have granted the relief sought by the applicant with costs granted its favour.

[7] The destination of the intended appeal, as stated above, is the full court of this Division or the Supreme Court of Appeal.

Legal principles applicable to applications for leave to appeal

[8] The determination of applications for leave to appeal is in terms of section 17(1) of the Superior Courts Act 10 of 2013 ('Superior Courts Act'). This is the enabling or gatekeeping provision for such applications. Section 17(1) reads as follows in the material part:

- (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 ...

[9] Section 17(1) of the Superior Courts Act received the attention of a full court of this Division in *Democratic Alliance v President of the Republic of South Africa and Others* ('DA

v President of RSA)⁶ wherein the following authoritative observations were made concerning the test for leave to appeal:

[4] The test as now set out in s 17 constitutes a more formidable threshold over which an applicant must engage than was the case. Previously the test was whether there was a reasonable prospect that another court might come to a different conclusion... The fact that the Superior Courts Act now employs the word “would” as opposed to “might” serves to emphasise this point. As the Supreme Court of Appeal said in *Smith v S_2012 (1) SACR 567 (SCA)* at para 7:

‘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.’

[5] ...

[6] The second basis upon which leave should be granted is that there is a compelling reason, that is apart from the existence of conflicting judgments on the matter under consideration which require clarification from a higher court. In essence the compelling reason is whether the case raises issues of significant public importance.

[10] Still in *DA v President of RSA*, the Full Court emphasised the threshold for granting leave to appeal has been elevated to a more formidable level.⁷ This holding, in fact, had come from a long line of cases since the decision in *The Mont Chevaux Trust v Goosen and others*⁸ by the Land Court (then known as the Land Claims Court).

[11] Fairly recently in *Ramakatsa and Others v African National Congress and Another* (*‘Ramakatsa v ANC’*)⁹ the Supreme Court of Appeal (*‘the SCA’*) dealing with the test for leave to appeal held as follows:

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

⁶ *Democratic Alliance v President of the Republic of South Africa and others* (21424/2020) [2020] ZAGPPHC 326 (29 July 2020) *coram*: Mlambo JP (as he then was), Davis JP and Molefe J (as she then was).

⁷ *DA v President of RSA* [4].

⁸ *The Mont Chevaux Trust v Goosen and others* 2014 JDR 2325 (LCC); (LCC14R/2014) [2014] ZALCC 20 (3 November 2014) [6], *per* Bertelsmann J.

⁹ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021).

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 (Pty) Ltd v Independent Advisory (Pty) Ltd* [2020] ZASCA 17; 2020 (5) SA 35 (SCA)], 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 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.¹⁰

[footnotes omitted]

[12] More legal principles than those stated above apply in respect of applications for leave to appeal. But I find those cited above to be more pertinent. I will also have regard to those featuring in submissions by counsel.

Grounds of appeal (discussed)

General

[13] The applicant’s grounds of appeal are cited above.¹¹ But some or even most of the grounds are directed at the reasoning of the Court in the Judgment. This does not comport with the longstanding principle of our law, confirmed at the higher level as in the decision of the Appellate Division (now known as the SCA), in *Western Johannesburg Rent Board and Another v Ursula Mansions (Pty) Ltd*.¹²

¹⁰ *Ramakatsa v ANC* [10].

¹¹ Par [6] above.

¹² *Western Johannesburg Rent Board and Another v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A).

In the result I agree with the ultimate conclusion arrived at by Davis J, albeit for different reasons. This renders it unnecessary to decide on the correctness of his reasoning, since an appeal does not lie against the reasons for judgment but against the substantive order made by the court a quo...¹³

[underlining added]

[14] Be that as it may I will use the substance of the grounds to formulate rubrics under which the discussion will unfold. I am grateful to counsel for both oral and written submissions, some of which would be directly referred to in the discussion.

[15] Mr Sullivan for the applicant also referred to the decision in *Notshokovu v S*¹⁴ wherein the SCA, dealing with an application for special leave to appeal, echoed the holding that an appellant seeking leave to appeal now faces a higher and stringent threshold under section 17(1) of the Superior Courts Act than it was the case under the repealed Supreme Court Act 59 of 1959.¹⁵ And that, overall, it is of utmost significance that an applicant for leave show a sound rational basis for the conclusion that prospects of success exist on appeal.¹⁶

Appealability

[16] Mr Sullivan also made submissions regarding the appealability of the Judgment or the orders incorporated therein. This did not really arise from the respondent or submissions by the respondent's counsel or the Court, but perhaps it was a pre-emptive strike on his part or that of his client, so to speak, in case the respondent were to contend that the Judgment is (or orders therein are) incapable of an appeal. He cited a few authorities in support of his submissions in

¹³ *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole* 2013 (5) SA 183 (SCA) [39], relying on *Western Johannesburg Rent Board v Ursula Mansions* at 354-355. See also *President of the Republic of South Africa and Another v Tembani And Others* 2025 (2) SA 371 (CC) [73]-[74].

¹⁴ *Notshokovu v S* (157/15) [2016] ZASCA 112 (7 September 2016).

¹⁵ *Notshokovu v S* [2]. See also pars [9]-[10] above.

¹⁶ *Four Wheel Drive Accessory Distributors CC v Rattan N.O.* 2019 (3) SA 451 (SCA) 463F.

this regard, including the SCA decision in *Zweni v Minister of Law and Order of the Republic of South Africa* ('Zweni').¹⁷

[17] In *Zweni*, decided more than three decades ago, the Appellate Division (now the SCA), sets out the principles of appealability of orders or judgments as including the following:

1. ... as a general rule, piecemeal consideration of cases is discouraged...
2. In order to achieve this result, a number of different legislative devices have been employed from time to time. The requirement of leave to appeal is one. Another is to prohibit appeals unless the order appealed against has the effect of a final judgment. And the Courts have, by way of interpretation, held consistently that rulings are not appealable decisions.
- ...
7. In determining the nature and effect of a judicial pronouncement, 'not merely the form of the order must be considered but also, and predominantly, its effect' (*South African Motor Industry Employers' Association v South African Bank of Athens Ltd* 1980 (3) SA 91 (A) at 96H).
8. A 'judgment or order' is a decision which, as a general principle, has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings (*Van Streepen & Germs (Pty) Ltd* case *supra* at 586I-587B; *Marsay v Dilley* 1992 (3) SA 944 (A) at 962C-F). The second is the same as the oft-stated requirement that a decision, in order to qualify as a judgment or order, must grant definite and distinct relief (*Willis Faber Enthoven (Pty) Ltd v B Receiver of Revenue and Another* 1992 (4) SA 202 (A) at 214D-G).
9. The fact that a decision may cause a party an inconvenience or place him at a disadvantage in the litigation which nothing but an appeal can correct, is not taken into account in determining its appealability (*South Cape Corporation (Pty) Ltd v Engineering C Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 550D-H). To illustrate: the exclusion of certain evidence may hamper a party in proving his case...¹⁸

[18] Fairly recently in *MEC for Economic Development Gauteng and Another v Sibongile Vilakazi and Others* ('Sibongile Vilakazi'),¹⁹ the SCA provided the following summary on the principles for appealability of orders as derived from *Zweni*:

¹⁷ *Zweni v Minister of Law and Order of the Republic of South Africa* 1993 (1) SA 523 (A).

¹⁸ *Zweni* at 532-533.

¹⁹ *MEC for Economic Development Gauteng and Another v Sibongile Vilakazi and Others* (783/2023) [2024] ZASCA 126; [2024] 4 All SA 344 (SCA) (17 September 2024).

... (a) the decision must be final in effect and not open to alteration by the court of first instance; (b) it must be definitive of the rights of the parties; (c) and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.²⁰

[19] In *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* ('SCAW')²¹ the Constitutional Court had reset and actuated the approach on appealability to a foundation constituted by a consideration of the interests of justice.²² This was expatiated on in *Tshwane City v Afriforum and another*²³ where it was held that a determination of appealability no longer hinges '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', as held in *Zweni*, as that test or approach 'is now subsumed under the constitutional interests of justice standard'.²⁴ The Constitutional Court went further and explained that when determining appealability or whether to grant or refuse leave to appeal, the interests of justice prevail over any impediments which existed in pre-Constitution common-law.²⁵ But this disposition does not mean that the common law principles on appealability are discarded, although those principles have to yield to the interests of justice depending on the facts of a matter.²⁶ For the principles in *Zweni*²⁷ maintain their durability and gravitational pull on appealability of orders amidst 'the capacious remit of the interests of justice'.²⁸

²⁰ *Sibongile Vilakazi* [21], relying on *Zweni* at 532-533.

²¹ *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) ('SCAW').

²² SCAW at [41].

²³ *City of Tshwane Metropolitan Municipality v Afriforum and Another* (157/15) [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC) (21 July 2016) ('*Tshwane City v Afriforum*').

²⁴ *Tshwane City v Afriforum* [40].

²⁵ *Tshwane City v Afriforum* [41].

²⁶ *Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV Smart and another* [2025] 1 All SA 60 (SCA); 2025 (1) SA 392 (SCA) ('*Minmetals*') [32].

²⁷ *Zweni* at 532-533.

²⁸ *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* 2023 (5) SA 163 (SCA) [30]; *Minmetals* [32].

[20] In this Leave to Appeal, it is submitted that the Judgment (and its order) when considered against the above principles is appealable. I do not have a recollection of any submissions to the contrary by Ms Omar for the respondent. I agree that the Judgment is (or the substantive orders incorporated therein are) appealable. I turn, next, to the grounds of appeal.

The Court correctly identified, but misapplied the principles applicable to contempt of court applications

[21] It is submitted on behalf of the applicant that, whilst this Court correctly cited principles from the decision of the Constitutional Court in *Secretary of State Capture Commission v Zuma II* on the principles applicable to contempt of court applications, this Court misapplied the principles. This is so, because, instead of finding that the respondent, as the contemnor, did not breach the Order, when the Court ought to have found that on the facts the elements for contempt of court were met by the applicant.

[22] Indeed I found in the Judgment that the respondent did not fail to comply with the Order. I clearly explained why this third element of the offence of contempt of court was not established.²⁹ From what is before me in this Leave to Appeal, I do not see how this could have been erroneous or misapplication of any principle.

[23] Therefore, not all the elements for contempt of court were established and, thus, there was no room created to presume willfulness and *mala fides* on the part of the respondent. This means that I do not find any merit in this ground or this part of the ground for the intended appeal.

²⁹ Judgment pars [39]-[45] CL 00-14 to 17.

The Court ruled that ‘there is no proof that the respondent is guilty of any of activities or conduct breaching the Order’

[24] It is submitted under this ground that the Court erred in its conclusion that ‘there is no proof that the respondent is guilty of any of these activities or conduct’.³⁰ It is further submitted that this conclusion reached by the Court was erroneous since it meant that the respondent’s conduct set out in the papers before the Court was held not to be prohibited by the Order. Further, that the conclusion narrowly construed the contents of terms 3.1.3 and 4 of the Order. This part of the ground is similar or linked to the one already discussed. What I stated there may find application here. But, I do not agree that I narrowly construed the material parts of the Order, or any part of the Order for that matter, in reaching the conclusions I did.

[25] I also do not find that the matter was approached in a manner that essentially amounted to revisiting ‘the commercial rationale’ of the Order. All I was concerned with was determining whether the respondent acted in breach of the Order upon a principled interpretation of the terms of the Order and, thus, liable to be found guilty of contempt thereof. Such finding is not established by the cumulative effect of the conduct, as a single act or omission may suffice in this regard.

[26] It is submitted that the respondent admitted that she contacted the applicant’s clients after the Order was served on her and that this should suffice. I clearly dealt with this and held that conduct, such as contact with the applicant’s clients – without more – would not amount to failure to comply with the Order.³¹ The latter part of the holding, in my view, is clarified by this part of the Judgment:

³⁰ Judgment par [43], CL 00-15 to 16.

³¹ *Ibid.*

It is vital that the respondent denies that she is in possession of any of the applicant's confidential information. This is the point of departure, without proof of which, any of the alleged contact or visit by the respondent of the applicant's customers or vendors will be not contrary to the terms of the Order. The mischief the Order sought to guard against was the peddling of the applicant's confidential information. For the applicant – by obtaining the Order - had sought to shield the unlawful employment or dissemination of its confidential information or trade secrets by the respondent or at her instance. The Order is not a travel or communication embargo against the respondent.³²

[27] The above, in my view, also disposes of the contention that the mere employment of the respondent by Vallard is sufficient to establish failure to comply with the Order or terms 3.1.3 and 4 thereof, when widely construed.

[28] Bearing in mind what is stated above on how I have construed (or in the applicant's view, misconstrued) the terms of the Order, I consider it necessary to state that the correct approach to interpretation is still that set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.³³ And the following *dicta* from *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others*³⁴ provide principles directly applicable to the interpretation of judgments and orders:

As indicated earlier in the judgment, the determination of this appeal depends on the proper interpretation of the Preller J order. The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual, well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention.³⁵

³² Judgment par [44] CL 00-16 to 17.

³³ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) (16 March 2012).

³⁴ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* 2013 (2) SA 204 (SCA).

³⁵ *Finishing Touch 163 v BHP Billiton* 2013 (2) SA 204 (SCA) [13] endorsed by the Constitutional Court in *Eke v Parsons* 2016 (3) SA 37 (CC) [29]. See further *Richards and Others v Rabie and Others* (11872/2022) [2024] ZAWCHC 408; [2025] 1 All SA 487 (WCC) (2 December 2024) [36]; *HLB International (South Africa) v MWRK Accountants and Consultants* (113/2021) [2022] ZASCA 52; 2022 (5) SA 373 (SCA) (12 April 2022) [26]; *Discovery Health (Pty) Ltd v Road Accident Fund and Another* 2025 (3) SA 225 (GP) [56] *coram* Mlambo JP (as he was then), Opperman J and Bam J. See also *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A)304D *et seq.*

[29] The above clearly is to the effect that the so-called admissions (of contacting two of the applicant's clients) need to be considered against the 'manifest purpose of the order'. And doing this does not constitute revisiting 'the commercial rationale' of the Order, as submitted by Mr Sullivan for the applicant. It is a quest to ascertain the intention of the Court primarily 'from the language of the judgment or order' according to the rules of interpretation.³⁶ On the basis of this approach, the contact by the respondent and her employment with Vallard even with its declared position of being the undisputed direct competitor of the applicant, would still not serve as sufficient proof that the respondent is guilty of any of the activities or conduct breaching the Order. I agree with Ms Omar for the respondent that the undisputed facts of the matter clearly establish that Vallard already had a relationship with the so-called clients of the applicant which were contacted by the respondent, as confirmed by Vallard's vendor number with them. The respondent contacted them within the course and scope of her employment with Vallard. Considered against the bedrock provided above on interpretation of judgments or court orders - accompanied by an optimum dosage of sober-mindedness - there was clearly no breach of the terms of the Order established. Therefore, I agree with Ms Omar that no presumption of willfulness and *mala fides* was competent requiring a rebuttal by the respondent.

[30] The applicant's ground that the respondent ought to have ceased and desisted from unlawfully competing with the applicant was not established. Besides, with the respondent only being an employee of Vallard unlawful competition would not be legally competent. And Vallard was not cited in proceedings leading to the Judgment. I do not agree that my reasoning in any part of the Judgment conflated the requirements for unlawful competition with the terms of the Order.

³⁶ *Ibid.*

[31] Therefore, I find no merit in these grounds of appeal. An appeal premised on these grounds would have no reasonable prospect of success.

Awarding of punitive costs against the applicant

[32] The applicant also seeks leave to approach the SCA or a full court of this Division on the ground that the punitive costs awarded against the applicant was an unjustified exercise of the discretion of the Court. It is further submitted in this regard that the applicant had nothing more to do than approach the Court to enforce a pre-existing valid and binding Order, as well as raising an arguable case on the wording of the Order. Therefore, the Court erred in awarding punitive costs against the applicant, Mr Sullivan submissions concluded.

[33] Ms Omar for the respondent submitted that in awarding the punitive costs it was an exercise of discretion of the part of the Court.³⁷ And that the exercise was informed by the fact that the respondent was rushed to Court and the manner in which the application was pursued. I agree with these. And, I also rely on what I stated in the Judgment as reasons for making such an award. I do not find this ground meritorious, in as much as costs awards do not ordinarily predicate appeals.

Conclusion and costs

[34] Considering what is stated above, I find all grounds of appeal advanced by the applicant, including those not specifically discussed above, to be without merit. The appeal would have no reasonable prospect of success. Further, I am not aware of any compelling

³⁷ DE van Loggerenberg, *Erasmus: Superior Court Practice* (Service 26, Jutastat e-publications May 2025) RS 23, 2024, D5-6 to D5-7 and the authorities cited there.

reason - of a meritorious nature - why the appeal should be heard and my attention was not drawn to any.³⁸

[35] Therefore, the Leave to Appeal will be dismissed with costs. I will award costs of counsel on scale B. I find this appropriate on the circumstances of this matter.

Order

[36] In the result, I make the following order:

1. the application for leave to appeal is dismissed, and
2. the applicant is liable for costs of the application, with costs of counsel on scale B.



Khashane La M. Manamela
Judge of the High Court

Date of Hearing : **4 June 2026**
Date of Judgment : **21 August 2026**

Appearances:

For the applicant : Mr JH Sullivan
Instructed by : Tuckers Attorneys
Ravenshood, Johannesburg

For the respondent : Ms Y Omar
: Omar Attorneys
Boksburg, Johannesburg

³⁸ Section 17(1)(a)(ii) of the Superior Courts Act, quoted in par [8] above.