



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

Case No: 090698/24

(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED:

SIGNATURE

DATE

In the matter between:

**LEGAL PRACTITIONERS FIDELITY FUND
LEGAL PRACTITIONERS FIDELITY FUNDS BOARD**

**Applicant
Second Applicant**

and

LAHER CONSTRUCTION (PTY) LTD

Respondent

In re

LAHER CONSTRUCTION (PTY) LTD

Applicant

**LEGAL PRACTITIONERS FIDELITY FUND
LEGAL PRACTITIONERS FIDELITY FUNDS BOARD**

**First Respondent
Second Respondent**

LEAVE TO APPEAL - JUDGMENT

MOGALE AJ

INTRODUCTION

[1] This is an application for leave to appeal against the entire judgment and order I delivered on 26 May 2026. In that judgment, I reviewed and overturned the decision of the first and second respondents (the "Fund" and the "Board") to dismiss the applicant's claim pursuant to section 55 of the Legal Practice Act 28 of 2014 ("the LPA"). I remitted the applicant's claim back to the Fund for further

consideration and directed the Fund and the Board to bear the costs of this application.

- [2] The Legal Practitioners Fidelity Fund (LPFF) seeks leave to appeal to the Supreme Court of Appeal, alternatively, to the Full Court of this Division. The respondent, Laher Construction, opposes the application.

The legal test for Leave to Appeal

- [3] The application is brought in terms of section 17(1)(a) and (ii) of the Superior Courts Act, which provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard.

- [4] Our courts have consistently applied the test for whether leave to appeal should be granted. Courts' liberal approach to granting leave is discouraged as inconsistent with s17 of the Act. For instance, in *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*, 9213/160 [2017] ZASCA 17 (22 MARCH 2017), the Supreme Court of Appeal stated as follows regarding the trial court's liberal approach to granting leave to appeal:

"It is important to mention my dissatisfaction with the court a quo's granting of leave to appeal to this court. The test is whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possibility of success."

- [5] The applicant raised several grounds of appeal that the court erred in fact and/or in law, as follows:

5.1. The court correctly found that Section 55(1) of the Legal Practice Act, Act 28 of 2014, states as follows: "The Fund is liable to reimburse persons who suffer pecuniary loss, not exceeding the amount determined by the Minister from time to time by notice in the Gazette, as a result of theft of any money or other property given in trust to a trust account practice in the course of the practice of the attorney, if the theft is committed by an attorney in that practice, or any person employed by that practice or supervised by that attorney".

5.2. The court correctly found that in accordance with Section 55(1) of the Legal Practice Act, Act 28 of 2014, the elements applicable for a successful claim against the First and Second Applicants are:

- (a) That there must be pecuniary loss
- (b) The loss must result from theft
- (c) The theft must be money or property given in trust to a trust account practice
- (d) The theft must be committed by an attorney in that practice or an employee under their supervision.

5.3. The court correctly accepted the following common cause, undisputed facts:

- (a) That the Applicant (Respondent herein) deposited R 1 950 000-00 into the trust account of the Third Respondent.
- (b) That these funds were entrusted to the Third Respondent for a specific purpose, namely, to be held in trust and transferred to the seller exclusively upon transfer of the property.
- (c) Without the Applicants' authorisation and contrary to the explicit terms of the sale agreement, the Third Respondent transferred the funds to Misty Blue.
- (d) The property was never transferred, and the Applicant did not receive the funds.
- (e) The Third Respondent's actions were not merely negligent or a breach of contract; he intentionally disbursed funds to his own client, Misty Blue, in direct contravention of the mandate provided by the Applicant.
- (f) The fact that the third respondent also represented Misty Blue does not absolve him of his fiduciary duty to the Applicant as the depositor of the trust funds.
- (g) The agreement acknowledged (the initial agreement and the settlement agreement) that the funds were in the trust account. It did not authorize their release to Misty Blue prior to the transfer of the property or the alternative payment made by Misty Blue. Although Misty Blue might be held liable under contractual obligations, the direct cause of the applicant's loss was the third respondent's release of the trust funds.
- (h) The fund does not serve as a guarantor against commercial risks; rather, it functions as a guarantor against the theft of funds by legal practitioners.

5.3. Acting Madam Justice Mogale erred in law by finding that on the common cause facts referred to in paragraph 1.2 supra, the Third Respondent committed theft as envisaged in Section 55 of the Act.

5.4. The court erred in law by finding that on the common cause facts referred to in paragraph 1.2 supra, the Third Respondent committed theft as envisaged in Section 55 of the Act.

5.5. The court should have found that the Third Respondent, a director of Misty Blue (and his client) committed fraud when he, in his capacity as transferring attorney, transferred the applicants funds to Misty Blue more specifically when it is considered that the Third Respondent as attorney promised through an agreement to keep the applicants funds on his trust account and to register an immovable property that should have been developed by Misty Blue, which it either could not or did not do in accordance with the agreements).

5.6. If the court correctly applied the law to the common cause facts as aforesaid, the court ought to have rejected the Applicant in the main application's claim, because Section 55 of the Act as aforesaid strictly covers incidents and/or commissions of theft by an attorney and not fraud.

Evaluation of the grounds of appeal

- [6] The LPFF claims that the facts it accepts indicate fraud rather than theft. They argue that the whole transaction was flawed by a fraudulent scheme from the beginning. However, this point was never argued in the LPFF's case. It was neither pleaded nor discussed in their arguments or during trial. The evidence never supported or revealed the factual basis needed for such a fraud claim against Laher Construction.
- [7] It is well-established that a party is generally not permitted to raise a new point on appeal that was not pleaded or argued in the court below. While there is an exception for points of law covered by the pleadings and the evidence that cause no prejudice, this is not such a case.
- [8] The distinction between fraud and theft is not a mere technicality; it involves different constituent elements and would have required a different defence from Laher Construction. As the respondent correctly points out, to now characterise the conduct as fraud would raise factual questions about misrepresentation and intent that were never in issue.
- [9] The question for the purposes of section 55(1) was whether Laher Construction suffered a pecuniary loss because of the theft of any money or other property given in trust to a trust account practice. The undisputed facts, now accepted by the LPFF, speak directly to this. Money was given in trust to

Mr Pillay's practice. He was mandated to hold it until the property was transferred. Instead, he intentionally and dishonestly disbursed it without authority, to his own client. This is the very essence of the theft of trust funds.

[10] I find that the LPFF is seeking to use this application for leave to appeal to reconstruct the basis for its decision. It rejected the claim because it said the transfer was authorised. That case has failed. It cannot now, after the event, invent a new rationale for the decision. As the Constitutional Court held in *National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd*, (CCT131/18) [2019] ZACC 28, reasons formulated after an administrative decision has been made cannot be relied upon to render the decision rational, reasonable, and lawful.

[11] In my view, the LPFF has failed to demonstrate a reasonable prospect that another court would reach a different conclusion. The sole ground of appeal is a newly constructed argument that is both procedurally inadmissible and substantively defective. The proposed appeal does not address the actual reasons for my judgment but instead attempts to reframe the LPFF's case on appeal.

[12] The LPFF has not provided any convincing reasons for why the appeal should be heard, as required by section 17(1)(a)(ii). The legal issue they aim to raise is neither of public importance nor a matter that needs resolution by a higher court. The fundamental legal principle that knowingly misappropriating trust funds amounts to theft is widely recognised.

[13] In the circumstances, I find that the application for leave to appeal has no prospects of success. For these reasons, I am persuaded that leave to appeal should be dismissed.

[14] In the premises, the following order is made:

- a. The application for leave to appeal is dismissed with costs.



K MOGALE,

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, PRETORIA

Electronically submitted.

Delivered: This Judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and uploading to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 25 August 2026

Date of hearing: The matter was heard in an open court. The matter may be determined accordingly. The matter was set down for a court date on 24 August 2026.

Date of Judgment: 25 August 2026

APPEARANCES

Applicant counsel:

Mr Van Wyk

Instructed by:

Stegmanns Inc

Respondent:

Advocate Naidoo

Instructed by:

Shaheed Dollie Inc