



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

Case no 2024-096053

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 28 August 2026

In the matter between:

GLENN PHILLIP SHEPPARD NO

Applicant

and

LANCE NEVILLE SHEPPARD NO

First Respondent

VIMAL GOWAN NO

Second Respondent

**THE STANDARD BANK OF SOUTH AFRICA
LIMITED**

Third Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

Fourth Respondent

**THE MASTER OF THE HIGH COURT,
JOHANNESBURG**

Fifth Respondent

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] The first and second respondents appeal my judgment and order dated 4 September 2024,¹ in which I granted interim interdictory relief in favour of the applicant, pending the finalisation of the statement-and-debatement proceedings between the Harlequin Trust and the Insync Investments Trust. The parties are referred to as they were in the urgent application.

[2] Mainly three issues need deciding: firstly, whether the application for leave to appeal was validly delivered and lodged; secondly, whether, if so, it has in any event lapsed or been abandoned through delay; and thirdly, the merits, which include the threshold question of the appealability of the interim order, with reference to the well-known case of *Zweni v Minister of Law and Order* (“Zweni”).²

Delivery and lodging

[3] The order under appeal granted interim relief freezing the Harlequin Trust's account with Standard Bank, directing the reversal of transactions from 21 August 2024 to restore the balance to approximately R59 980 690.14, and interdicting the first applicant from transacting on the account except pursuant to a resolution signed by all three trustees, certifying that the transaction was not a distribution of income or capital. The order was to lapse if statement-and-debatement proceedings were not instituted within thirty court days. The proceedings were duly instituted.

[4] The respondents' application for leave to appeal was served by email on the applicant's attorney and filed on Court Online on 26 September 2024, within the fifteen-day period prescribed by Rule 49(1)(b). The Court Online system generated a notification under the correct case number, 2024-096053, identifying the document as a leave to appeal in this matter. The application then appeared as “pending” on the Court Online case file, awaiting the Civil Appeals Registrar's review, as is standard for leave applications.

¹ [1992] ZASCA 197.

² 1993 (1) SA 523 (A).

[5] No hearing date was ever allocated. On 25 February 2025, it was the applicant's attorney who first wrote to my former secretary (while I was acting), enquiring about the status of the respondents' application. Despite this follow-up, nothing moved. The respondents themselves did not follow up until 17 September 2025, almost a year after the initial filing, when their attorney emailed my secretary, Mr Moolman, with the application attached. Mr Moolman replied that he had not received any notification from the Civil Appeals section and queried whether the respondents had complied with the Practice Manual procedures for applying for leave to appeal.

[6] Only then did the respondents' attorneys identify a further procedural omission: the application had not been delivered to the JP.Gauteng@judiciary.org.za email address required for the judge who had been acting at the time of the judgment. On 28 October 2025, they resubmitted the application to that address and, on the same date, uploaded proof of service. A further re-upload followed on 3 November 2025. Both documents bore the correct Court Online cover page and were approved on the system, but still no hearing date was allocated

[7] In the interim, the applicant commenced taxation of the urgent court costs: a notice of intention to tax and the bill of costs were served on 1 December 2025. However, those documents were mislaid at the respondents' attorneys' office when the receptionist failed to pass them to the team. As a result, the respondents' attention was not drawn to the commencement of taxation. The taxation documents were later uploaded on 17 February 2026. It was only on 30 June 2026, when the respondents' attorney checked the Court Online case profile for movement on the leave application, that she noticed taxation had proceeded while the leave to appeal remained pending.

[8] On 2 July 2026, the respondents' attorneys objected, stating that taxation was premature and should be withdrawn because the leave application was still pending. The applicant's attorney then demanded an explanation for the respondents' failure to prosecute the leave to appeal, which ultimately led to correspondence dated 12 August 2026 to my secretary. This is how the application for leave to appeal came to my attention. After confirmation from the respondents' attorneys that they wished to

proceed with the application, the matter was set down for hearing, with a direction that the parties must address me on whether there is, in fact, valid leave to appeal before me.

The delivery and lodging

[9] Counsel for the respondent relied on section 18(5) of the Superior Courts Act³ to argue that an application for leave to appeal is made only after an application is lodged with the Registrar in accordance with the rules. Section 18(5), however, is a deeming provision linked to subsections (1) and (2) governing automatic suspensions. On a narrow reading, section 18(5) concerns only suspension and says nothing directly about the validity of a notice for the purposes of Rule 49 or section 17. Such a reading is too restrictive and does not take the matter much further.

[10] The focus is rather on Rule 49. Rule 1 provides that "deliver" involves both serving the document on other parties and filing it with the Registrar. Rule 49(1)(b) requires this combined act to be completed within fifteen court days of the order. It bears emphasis that the application was filed on the correct Court Online file, and that the system's automated email and cover letter reflect the correct case number. It is the notice itself (i.e. the document uploaded by the applicants' attorneys) that contained the incorrect number.

[11] On the papers before me, therefore, both elements of delivery were satisfied within that period. The applicants' attorneys served the notice on the respondent's attorney of record by email on 26 September 2024, and the explanatory affidavit explains that the same notice was filed on Court Online on the same date, generating an automated confirmation from the Court Online system itself that reflected the correct case number, 2024-096053, and identified the document as a leave to appeal in this matter.

[12] I am accordingly not persuaded that the outcome for which the applicant contends, namely that no application for leave to appeal exists at all, is correct. The

³ 10 of 2013.

names of the parties on the face of the defective notice were, throughout, those of the present litigants, correctly identifying who sought leave to appeal against whom and against which judgment. There was no possibility that the respondent would be misled as to the proceedings to which the notice related. Where service was proper, where the Registrar's own Court Online system generated a filing confirmation under the correct case number within the prescribed period, and where the parties themselves were never in any doubt as to the matter to which the notice related, I am not prepared to hold that the substantive requirement of delivery under Rule 49(1)(b) was not met merely because of a clerical error on the face of the notice.

[13] The core issue here is the unexplained nearly two-year delay between the notice being issued and its enrolment for hearing. The respondents are mainly responsible for this delay, during which the applicant took all necessary steps to progress the application. This is the basis on which the application must be tested, and I now address that question.

The delay

[14] On the respondents' own account, the delay comprises two substantial periods of inactivity attributable to them: roughly eleven months between the initial filing in September 2024 and their first follow-up in September 2025, and a further eight months during which the taxation process went undetected at their offices (December 2025 to June 2026), with corrective steps generally taken only after prompts from the applicant or the court, rather than on the respondents' own initiative.

[15] Nonetheless, no formal application has been brought to declare the respondents' leave to appeal as lapsed or abandoned. It would be inappropriate to make a finding on whether it has been abandoned. But something needs to be said about the delay. The failure to diligently prosecute an application for leave to appeal has various consequences. Firstly, it burdens judicial resources: a judge must return to a matter long after it was decided, reacquaint herself with the papers and the judgment, and consider grounds of appeal against a factual and legal backdrop that is no longer fresh. Secondly, it prejudices the opposing party, who is prevented from bringing related proceedings, such as taxation of costs, to finality while the leave

application remains unresolved. Thirdly, it may undermine the integrity of the appellate process itself, particularly where the delay is accompanied by only partial or reactive explanation and where prospects of success are, in any event, limited.

Is the order appealable?

[16] Before turning to the individual grounds, it is necessary to consider whether the order of 4 September 2024 is appealable at all. As *Zweni v Minister of Law and Order*⁴ explains, “a non appealable decision (ruling) is a decision which is not final (because the court of first instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings”. The Supreme Court of Appeal has recently reaffirmed the continuing relevance of this “Zweni trinity”⁵ in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd*,⁶ emphasising that the doctrine of finality remains central in determining appealability.

[17] I accept that the first *Zweni* requirement is met as far as para 2.2 of my judgment is concerned: once granted, the order was not susceptible to alteration by this court in the ordinary course. The reversal of transactions and the restoration of the account to approximately R59 980 690.14 are a fait accompli and cannot be revisited. But that is not the end of the inquiry.

[18] The more difficult questions are whether the order is definitive of the parties' rights and whether it disposes of a substantial portion of the relief in the main proceedings. Read as a whole, the order does not determine entitlement to the funds in question. It does not allocate the money to any party, nor does it decide whether Harlequin is indebted to Insync or, if so, in what amount. That remains for the statement-and-debatement proceedings, which have since been instituted. To that extent, the order operates as a holding position pending final determination.

⁴ [1992] ZASCA 197.

⁵ Set out in the judgment as: “a non appealable decision (ruling) is a decision which is not final (because the court of first instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.”

⁶ [2023] ZASCA 63.

[19] The same applies to paragraphs 2.1 and 2.3. Although they impose a strict payment regime requiring resolutions certifying that transactions are not distributions of income or capital, they do so only “pending the institution and finalisation” of the statement-and-debatement proceedings and expressly to preserve the status quo. The order does not confer any substantive right to the monies on any party; it regulates access to the account in the interim so that the fund remains intact until the true rights and obligations are determined in the main proceedings. In that sense, it is no more than an interim interdict with a holding effect.

[20] On that basis, I am not persuaded that the second and third Zweni attributes are satisfied. The order is not definitive of the parties’ rights to the funds and does not dispose of any part of the substantive relief claimed in the statement-and-debatement proceedings; it preserves the fund and restricts distributions until those proceedings have run their course.

[21] I am accordingly not persuaded that the order is appealable. Even if I were to assume, for the sake of argument, that it is, the respondents must still satisfy the heightened section 17(1)(a) threshold: they must show that an appeal would have a reasonable prospect of success, not merely that another court might take a different view. I am not convinced that another court would.

Costs

[22] The applicant seeks costs on a punitive scale, contending that the respondents’ prolonged and largely unexplained delay in prosecuting their application for leave to appeal amounts to an abuse of the process of this court.

[23] An unreasonable delay in prosecuting proceedings may amount to an abuse of process, and the court is entitled to express its displeasure by making an appropriate costs order. Here, the respondents allowed their application to lie largely dormant, taking significant steps only when prompted by the applicant.

[24] In these circumstances, although I decline to declare the application lapsed or abandoned in the absence of a formal application to that effect, I am satisfied that a higher costs order is warranted.

Order

[25] The following order is made:

1. The application for leave to appeal is dismissed, with costs on scale C.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 26 August 2026

Date of judgment: 31 August 2026

For the applicant: GV Meijers instructed by JC Uys

For the respondent: D van Niekerk instructed by Cliffe Dekker
Hofmeyer Inc