

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO.: 2026-099682**

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

Date: 28 August 2026

E van der Schyff

In the matter between:

MR. SOLAR INSTALLATIONS (PTY) LTD

APPLICANT

and

VORSTER \$ BRANDT ATTORNEYS

FIRST RESPONDENT

CLEAR CHOICE BUILDERS (PTY) LTD

SECOND RESPONDENT

(In liquidation)

TUMISANG REGINALD KGABOESELE N.O.

THIRD RESPONDENT

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JUDGMENT:

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Van der Schyff J

[1] The applicant seeks leave to appeal the order granted on 19 May 2026, read together with the written reasons furnished on 2 June 2026.

- [2] On 19 May 2026, the application was struck from the urgent Insolvency Court roll, and the applicant was ordered to pay the costs of the application on an attorney-and-own-client scale.
- [3] This application for leave to appeal is directed at both the decision to strike the matter from the roll and the subsequent punitive costs order.
- [4] The applicant submits that another court would have stayed the proceedings or postponed the application *sine die*, rather than striking it from the roll. The applicant takes umbrage at the punitive costs order.
- [5] Section 17(1)(a) of the Superior Courts Act 10 of 2013 dictates that leave to appeal may only be granted where the court is 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.
- [6] I have considered the grounds of appeal and the submissions advanced on behalf of the parties. Having reconsidered the order and its underlying reasoning, in light of the grounds advanced, I am not of the opinion that an appeal has a reasonable prospect of success. Furthermore, no other compelling reason has been established to justify the hearing of an appeal.
- [7] That brings me to the appropriate costs order for this application for leave to appeal. The first respondent again submitted that a punitive costs order is appropriate under the circumstances.
- [8] The striking of the matter from the roll does not have the effect of a final judgment or order. It is therefore not appealable. Regard being had to the circumstances preceding the order on 19 May 2026, the punitive costs order was justified. The reasons for that order were provided, and the applicant's counsel correctly conceded in her heads of argument:  

'The Applicant acknowledges, subject to the qualifications advanced above, that its persistence with the urgent application may have warranted judicial disapproval and an adverse costs order. The issue is whether that conduct justified the exceptional attorney-and-own-client scale.'
- [9] In circumstances where a respondent should not be left out of pocket, and where a court deems it necessary to mark its disapproval of a particular party's conduct, it may exercise its discretion to grant costs on an attorney-and-own-client scale.

- [10] However, a court should be slow to dissuade litigants from pursuing applications for leave to appeal by penalizing them with punitive costs, except in exceptional cases where the facts and the conduct preceding the application for leave to appeal justify such an order. Although the threshold for exceptional circumstances was met when the initial order was granted on 19 May 2026, I am of the view that regarding this application for leave to appeal, costs on scale B should follow the result.

## ORDER

**In the result, the following order is granted:**

- 1. The application for leave to appeal is dismissed with costs on scale B.**

  
 E van der Schyff  
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

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|---------------------------|----------------------------|
| For the applicant:        | Adv. N Njeza               |
| Instructed by:            | G & T ATTORNEYS            |
| For the first respondent: | Adv. EJJ Nel               |
| Instructed by:            | VORSTER & BRANDT ATTORNEYS |
| Date of the hearing:      | 25 August 2026             |
| Date of judgment:         | 28 August 2026             |