



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 30848/2022

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 28 August 2026

Signature:

[Redacted Signature]

In the matter between:

AME TELECOMMUNICATIONS (PTY) LTD

Applicant/Defendant

And

ZAMORI ENGINEERING SERVICES (PTY) LTD

Respondent/Plaintiff

JUDGMENT – Application for leave to appeal

NYATHI J

Introduction

[1] The applicant seeks leave to appeal against the whole of my judgment and order delivered on 14 November 2025 in terms of which the applicant was ordered to pay the respondent the amount of R21 657 256.80 together with interest and costs, and the applicant's counterclaims were dismissed.

[2] The application is opposed.

[3] The applicant seeks leave to appeal either to the Supreme Court of Appeal ("SCA") or alternatively to a Full Court of this Division. The application is founded upon numerous grounds which, properly analysed, fall into the following broad categories:

- (a) the incidence of onus in relation to the respondent's *condictio indebiti* claim;
- (b) the findings concerning mistake and excusable error;
- (c) the findings relating to enrichment and impoverishment;
- (d) the rejection of the applicant's alleged agreements and counterclaims;
- (e) authority, ostensible authority and estoppel; and
- (f) credibility findings relating to Mr Swarts.

Applicable Legal Principles

[4] The applicable test is contained in s 17(1)(a) of the Superior Courts Act 10 of 2013.

[5] In *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176, the Supreme Court of Appeal held that leave to appeal should not be granted unless there is a sound and rational basis for concluding that the appeal has a realistic prospect of success.

[6] In *Ramakatsa and Others v African National Congress and Another* 2021 (1) SA 417 (SCA), the SCA reiterated that the threshold introduced by s 17 is more exacting than the pre-existing common-law test.

[7] It is therefore insufficient that another court may possibly arrive at a different conclusion. The applicant must demonstrate reasonable prospects that another court would do so.

[8] It is equally trite that an appellate court will be slow to interfere with factual findings and credibility assessments of a trial court unless a demonstrable and material misdirection has been shown. *R v Dhlumayo and Another* 1948 (2) SA 677 (A) remains the leading authority in this regard.

The Onus and the *Condictio Indebiti*

[9] A substantial portion of the applicant's grounds is premised upon the contention that this Court impermissibly shifted the onus resting on the respondent in respect of its *condictio indebiti* claim.

[10] That contention cannot be sustained.

[11] The judgment expressly recognised the respondent's enrichment claim and dealt separately with the applicant's positive case that the payments were made pursuant to three alleged partly written and partly oral agreements.

[12] The applicant did not content itself with a bare denial. It positively alleged that the payments were made in terms of identified agreements and founded its substantial counterclaims upon those agreements.

[13] As stated in *Pillay v Krishna* 1946 AD 946, where a litigant raises a positive defence and seeks substantive relief based thereon, that litigant bears the burden of proving the facts necessary for such defence or claim.

[14] This Court's finding that the applicant failed to establish the alleged agreements did not relieve the respondent of its overall onus. It merely reflected a finding that the only pleaded *causa* advanced by the applicant had not been proved.

[15] No material misdirection has been demonstrated in this regard.

Mistake and Excusable Error

[16] The applicant further contends that the respondent failed to prove that the payments were made under a reasonable and excusable mistake.

[17] The Court considered the evidence relating to the respondent's internal payment processes, the role played by Mr Schoonbee, and the circumstances under which the payments were discovered.

[18] The question whether a mistake is excusable is pre-eminently a factual enquiry.

[19] In *Mhlari NO and Others v Nedbank Ltd* 2024 ZASCA 39, the Supreme Court of Appeal reaffirmed that the reasonableness of a mistake depends upon a value judgment based on the factual matrix before the Court.

[20] The applicant's criticism ultimately amounts to an invitation to re-evaluate the evidence and draw different inferences. That is insufficient to establish reasonable prospects of success on appeal.

The Alleged Agreements and Counterclaims

[21] Central to the litigation was the applicant's contention that three agreements concluded during 2020 entitled it to retain the payments received and to recover additional amounts advanced in its counterclaims.

[22] The Court found that the applicant had failed to prove those agreements.

[23] Particular significance attached to the fact that persons allegedly directly involved in the conclusion of those agreements, namely Mr Schoeman and Mr Gouws, were not called to testify. The Court considered that omission in accordance with established principles relating to adverse inferences regarding a litigant's failure to call an available witness, including *Elgin Fireclays Ltd v Webb* 1947 (4) SA 744 (A).

[24] The applicant's sole witness, Mr Walles, conceded material limitations in his knowledge and was unable adequately to establish the formation and terms of the pleaded agreements.

[25] The findings reached by this Court were factual findings drawing upon the totality of the evidence.

[26] The applicant has not demonstrated any material misdirection capable of persuading another court reasonably to interfere therewith.

Authority, Ostensible Authority and Estoppel

[27] The applicant persists in contending that Mr Schoonbee possessed actual authority, alternatively ostensible authority, alternatively that the respondent should be estopped from denying such authority.

[28] These contentions were comprehensively addressed in the main judgment.

[29] The Court found that the conduct relied upon by the applicant did not amount to a representation emanating from the respondent as principal.

[30] In *Makate v Vodacom Ltd* 2016 (4) SA 121 (CC), the Constitutional Court emphasised that the representation relied upon for ostensible authority or estoppel must originate from the principal and must be relied upon by the representee.

[31] The applicant has largely repeated the arguments advanced at trial.

[32] No basis has been established upon which another court would reasonably conclude that the requirements of ostensible authority or estoppel were proved.

Complaints Concerning Mr Swarts

[33] The applicant argues that insufficient regard was had to alleged contradictions in Mr Swarts' evidence.

[34] The Court was alive to those criticisms.

[35] A trial court is not obliged to discuss every alleged inconsistency appearing in the record.

[36] The decisive issue is whether the alleged contradictions undermine the essential factual conclusions reached.

[37] In my view they do not.

[38] Even if certain aspects of Mr Swarts' evidence were approached differently, the applicant would remain faced with the fundamental difficulty that it failed to prove the pleaded agreements upon which both its defence and counterclaims rested.

Supreme Court of Appeal

[39] The applicant seeks leave directly to the Supreme Court of Appeal.

[40] No exceptional circumstances have been identified warranting departure from the ordinary route contemplated by s 17(6) of the Superior Courts Act.

[41] Nor does the matter raise a novel legal issue of general public importance.

Conclusion

[42] The application largely seeks a reconsideration of factual findings, credibility assessments and the evaluation of probabilities.

[43] The applicant has not demonstrated that another court would reasonably arrive at a different conclusion.

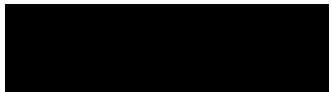
[44] Nor has the applicant established any compelling reason contemplated in s 17(1)(a)(ii) of the Superior Courts Act.

[45] I am accordingly not persuaded that the proposed appeal enjoys reasonable prospects of success.

Order

[46] The following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay the costs of the application for leave to appeal, including costs of senior counsel on the party and party Scale C.

— 
J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 20 August 2026

Date of Judgment: 28 August 2026

On behalf of the Applicant: Adv. D. Prinsloo

Applicant's attorneys: Klagsbrun Edelstein Bosman Du Plessis Inc; Pretoria

On behalf of the Respondent: Adv. S. Wagener SC

Respondent's attorneys: Weavind & Weavind Inc; Pretoria

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 28 August 2026.