



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case number no: 2026-167533

In the matter between:

JOHAN SMIT (NEE POTGIETER)

Applicant

and

MARLIZE MADGE ROUX

Respondent

Coram : Nziweni, J

Heard : 16 September 2026

Delivered : 16 September 2026 (electronically)

ORDER

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1. Application for leave to appeal is dismissed.
 2. The first respondent is ordered to pay the costs of this application for leave to appeal on the attorney-and-client scale.
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JUDGMENT DELIVERED ELECTRONICALLY

Nziweni, J

Introduction and background

[1] This is an opposed application for leave to appeal against the whole of the judgment and order of this Court delivered on 14 August 2026. In terms of the said order, this Court authorised the joinder of Succession Financial Planning Advisory Services (Pty) Ltd ("SFP") as the second respondent to the main restraint of trade application.

[2] The joinder order granted by this Court was intended to give effect to the prior order granted by Ralarala J on 31 July 2026. In terms of that order, Ralarala J directed the applicant in the main application to take the necessary steps to join SFP as a party by no later than 14 August 2026.

[3] It is of note that when the first respondent (the applicant in the present application) raised a preliminary point before Ralarala J, the main applicant vigorously opposed the joinder.

[4] The applicant in this application seeks leave to appeal the following findings:

- a. In finding that the main applicant was correct in bringing the joinder application on urgent basis;
- b. Finding that the applicant satisfied the requirements for an application of that type and had made out a case for the joinder of the SFP;
- c. Granting in order in terms of the main applicant's draft order;
- d. Made no order as to cost,

[5] The notice of appeal further states that the first respondent seeks that the order of this Court be set aside and replaced with an order in the following terms:

- a. The applicant's joinder application is dismissed;
- b. Alternatively to paragraph 2.1, the applicant's joinder application is struck from the roll for want of urgency;
- c. The applicant is directed to pay the first respondent's cost of the joinder application on the attorney and client scale alternatively on the party and party scale, in each case on the scale to be determined by the Court in terms of Rule 67 A(3);
- d. The first respondent contends further that the order of this court granted on 14 August 2026, this court delivered a short ex tempore ruling in which reasons were furnished in respect of urgency only. No reasons were furnished for the finding that the applicant had made out a case for the joinder of the second respondent and no reasons have been furnished to date.

[6] The leave to appeal is predicated on the following grounds:

Ground 1: This court misconstrued the order of Ralarala J dated 31 July 2026;

- a. This Court erred in construing paragraph 2.2 of the Ralarala order dated 31 July 2026, in isolation from the reasons delivered by that court;
- b. 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 rules relating to the interpretation of documents, and the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention.
- c. Had the court had regard to the reasons delivered on 31 July 2026, it would have found Ralarala J held, in terms, that:
 - a. the written agreement relied upon by the applicant further established that there is a partnership between Marlice Roux, as well as SFP;

- b. under those circumstances the second respondent is an interested party in these proceedings;
- c. the matter was removed from the roll for the reasons of non-joinder with costs against the applicant.
- d. The direction in paragraph 2.2 of the order to take the necessary steps to join the second respondent accordingly fell to be construed as a direction to join it in a capacity, and upon a basis, capable of remedying the defect which Ralarala J had identified, namely the applicant's want of locus standi arising from non-joinder of her co-partner. The court erred in failing so to construe it.

Ground 2: The court was materially misdirected as to what transpired on 31 July 2026

Ground 3: The requirement for joinder were negative on the applicant's own papers;

Ground 4: The joinder granted cannot give effect to the order of 31 July 2026;

Ground 5: Impermissible to re-ventilation of the point in limine.

Ground 6: Urgency

Ground 7: Costs

Ground 1: This court misconstrued the order of Ralarala J dated 31 July 2026;

[7] During the hearing of the joinder application it was asserted on behalf of the applicant that the reason the applicant brought the joinder application on an urgent basis, is because of the timeline in the order of Judge Ralarala and because the main application to which this relates, has already been found to be urgent. The applicant further stated that a restraint of trade application always has that measure of urgency, because the continuing conduct continues to erode the goodwill and continues to cause damage to the applicant for as long as it proceeds.

[8] It was vehemently argued that the reason Ralarala J ordered the joinder was to cure the lack of locus standi issue due to the partner not being joined. It was not the purpose of the order to have the company joined as a witness.

[9] Ralarala J's order was crafted by the legal representatives of the main applicant and the first respondent and was made an order of court.

[10] While this Court accepts the trite interpretative principle advanced by the first respondent, namely, that a court order and its underlying reasons must be read as a whole to ascertain its true text, context, and purpose, the conclusion the first respondent seeks to draw from this exercise is legally unsustainable.

[11] A holistic reading of the reasons delivered by Ralarala J reveals that the learned Judge focused exclusively on determining whether a necessary party had been omitted from the record. The finding that a partnership existed between the applicant and SFP served merely as the factual and legal foundation to establish that SFP possessed a direct and substantial interest in the matter, thereby necessitating its joinder.

[12] In the circumstances, this ground is legally untenable, and the reasons advanced hereinafter will elucidate why this is the case.

This Court was materially misdirected as to what transpired before Ralarala J on 31 July 2026

[13] The ground of appeal alleging that this Court was materially misdirected as to what transpired before Ralarala J on 31 July 2026 is entirely without foundation. The prior order explicitly dictated the exact procedural steps to be taken on 14 August 2026. Consequently, the assertion that the outcome achieved before this Court directly conflicts with the order of Ralarala J is incorrect; the order of 14 August 2026 is neither facially nor intentionally contradictory to the earlier directive but serves as its precise execution. In this regard, Ralarala J's order simply directed that SFP be joined as a party and did not require SFP to be cited as an applicant.

[14] In any event, a finding that SFP was a partner or a necessary party does not imply that it had to be joined as an applicant. In this instance, SFP has demonstrated no independent desire to litigate and did not initiate the main application. It is a trite principle of our law that an entity cannot be compelled to act as a co-applicant or a co-

plaintiff against its will. Consequently, in the circumstances, it was procedurally correct and appropriate to join SFP as a respondent. On the facts of the instant case, as far as the alignment of the parties is concerned, it is quite clear that nothing turns on the finding that there was a partnership.

Impermissible to re-ventilation of the point in limine

[15] It is worth noting that I agree with the submission that the order of Ralarala J remains valid and binding until set aside by a competent court. This Court did not reopen, vary, or review the underlying findings or the resultant directive, nor did it assume any jurisdiction to alter or pronounce them incorrect.

[16] As previously set out, by declining to uphold the first respondent's opposition, this Court did not re-ventilate the matter; on the contrary, it steadfastly refused to allow a settled issue to be re-litigated. It seems hardly consistent to hold that this Court re-ventilated the point in limine.

Contention that this Court failed to give reasons regarding why it ordered the joinder.

[17] It is not in dispute that the in the matter before Ralarala J, and a point in limine regarding non joinder was raised by the first respondent. Ralarala J stated the following in her ruling:

“ . . . there is a partnership between Marlice Roux, as well as SFP Advisory Services. So, under those circumstances, it is an interested party in these proceedings. So, I am going to allow the Respondent, the Applicant, to remedy that by adding the partnership which is now the SFP to these proceedings . . . ”

[18] Ralarala J's order reads as follows:

“Having read the papers filed of record and having heard counsel, it is ordered that-
1. This application is heard as a matter of urgency in terms of . . .

2. Upon hearing the argument of the point in limine advanced by the Respondent –
 - 2.1 The matter is removed from the roll;
 - 2.2 The applicant is directed to take the necessary steps, by no later than Friday, 14 August 2026, to join the entity known as Succession Financial Planning Advisory Service . . . as a party to these proceedings.
3. Once SFP has been joined, the parties may approach the Registrar of Ralarala J to arrange a further hearing of the restraint of trade application;
4. The Applicant shall pay the Respondent's wasted costs of the hearing on Friday, 31 July 2026."

[19] It was correctly argued before me on the 14 August that role was strictly enforcement and procedural compliance. During the hearing before Ralarala J the applicant was directed to launch the application for joinder within two weeks, if I understand correctly.

[20] This Court did provided reasons regarding the application, the brevity of which is directly attributable to the narrow scope of the enquiry left open by the prior order.

[21] The issue of non-joinder was fully ventilated before Ralarala J; consequently, the point in limine was sustained and the order of 31 July 2026 was duly granted. The corollary of this is that when the matter came before me, I could not re-open the debate on whether SFP possessed a direct and substantial interest.

[22] When turning to the notice of motion on 14 August 2026, it was evident that the applicant sought merely to give effect to the mandatory order of Ralarala J. In the absence of any procedural non-compliance or competent impediment raised by the respondent, there was no legal basis to find that the applicant had failed to satisfy the requirements for an application of this nature. Consequently, this Court was satisfied that a case for enforcement had been made out, and the order was granted accordingly. Albeit brief, these reasons directly addressed the narrow, non-discretionary issue before me.

[23] When a party is found to have a direct and substantial interest in a matter, the overriding requirement of the law is simply that they must be present before the Court to ensure their rights are not prejudiced. Whether they are aligned as an 'applicant' or a 'respondent' is a practical and technical distinction that does not impact the procedural validity of the joinder.

[24] Ralarala J's order explicitly directed the main applicant to take steps to join SFP 'as a party to these proceedings.' The order did not mandate alignment as an applicant. Consequently, citing SFP as the second respondent fully satisfied the procedural directive of that order.

[25] Furthermore, the argument that SFP ought to have been joined as an applicant rather than a respondent is legally untenable. A party cannot be compelled to seek relief as an active applicant against their will, and their alignment as a respondent in no way compromises the validity of their joinder.

The third and fourth grounds

[26] Turning to the third and fourth grounds of application, namely, that the requirements for joinder were negated on the applicant's own papers, and that the joinder granted cannot give effect to the order of 31 July 2026, both contentions must fail for the same fundamental reason. They represent an impermissible attempt to re-open and re-litigate the substantive merits of the joinder.

[27] As previously mentioned, the legal necessity of joining SFP was decisively determined by Ralarala J when the respondent's own point in limine was sustained. It was therefore not open to this Court on 14 August 2026 to evaluate whether the applicant's papers independently established the requirements for joinder, as the obligation to join had already been judicially mandated.

[28] Furthermore, the assertion that the joinder granted fails to give effect to the prior order is logically and legally untenable. At the risk of repetition, Ralarala J explicitly directed that SFP be joined to these proceedings by 14 August 2026. By ordering the joinder of SFP on that exact date, this Court did not err; rather, it executed the precise

procedural directive issued by Ralarala J. Consequently, both grounds lack any arguable prospects of success.

[29] Regarding the proceedings of 14 August 2026, the first respondent's contention that a costs order in their favour was warranted cannot be sustained. The general rule in our law is that costs follow the result. On that day, the applicant succeeded in establishing a case for enforcement and procedural compliance with the order of Ralarala J, while the first respondent's opposition was entirely unsuccessful. In the circumstances, a costs order in favour of the first respondent was not warranted. This ground as well has no prospect of success.

[30] The statutory requirement for granting leave to appeal is governed by Section 17(1)(a) of the Superior Courts Act 10 of 2013, which dictates that leave may only be granted where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why the appeal should be heard.

[31] As correctly pointed out by the main applicants this requires a stringent, objective evaluation of the prospective merits of the appeal. In light of the findings set out above, principally that the order of 14 August 2026 was a non-discretionary enforcement of a binding directive issued by Ralarala J, there are absolutely no reasonable prospects of another court arriving at a different conclusion.

[32] Furthermore, the application raises no question of public importance, nor is it of such a nature or significance as to warrant the attention of the Supreme Court of Appeal. No compelling reasons have been advanced to justify the intervention of an appellate court under Section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013. As noted above, the reasons for the order were delivered *ex tempore*, and this Court has nothing further to add to the reasons officially transcribed and recorded on that day. It follows that the statutory threshold has not been met, and the application must fail.

Urgency

[33] Regarding the issue of urgency, the contention that the application lacked the requisite urgency is without merit. Ralarala J's order of 31 July 2026 expressly imposed a strict judicial deadline, directing that the necessary steps to join SFP be taken by no later than Friday, 14 August 2026.

[34] As correctly argued by the applicant, a court-mandated timeline of this nature inherently creates procedural urgency. Had the applicant utilised ordinary, non-urgent motion court timeframes, it would have been impossible to comply with the directive, thereby placing the applicant in breach of a direct order of court.

[35] As correctly noted in the *ex tempore* ruling, the prior order did not terminate the urgent nature of the underlying dispute; rather, it dictated the timeline for the next procedural step. Accordingly, this Court was fully satisfied that the applicant was justified in enrolling the matter on an urgent basis. Consequently, this ground offers no competent basis upon which to grant leave to appeal, a position that Mr Maritz, counsel for the first respondent, properly conceded in part alongside his concessions regarding the issue of costs.

Conclusion

[36] For the sake of completeness, it is necessary to observe as an obiter dictum that the order delivered by this Court on 14 August 2026 is, in any event, strictly non-appealable. I also accept the contention advanced by Mr de Wet, counsel for the main applicant, that it is a well-established principle of our civil procedure, enunciated in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A), that an order is only appealable if it is final in effect, definitive of the rights of the parties, and disposes of a substantial portion of the relief sought in the main proceedings.

[37] I agree entirely with the Mr de Wet that the compliance order granted on 14 August 2026 was purely interlocutory and procedural in nature; it determined no substantive rights and merely ensured the proper composition of the parties before the main application could be heard. Consequently, on this ground alone, an application for leave to appeal is legally incompetent and carries no prospects of success.

[38] Finally, the applicant has sought a punitive costs order against the first respondent on an attorney-and-client scale. It is a well-established principle in our law that punitive costs are not lightly granted but are reserved for instances where a litigant's conduct displays a clear disregard for court processes or amounts to an abuse of the process of the Court.

[39] In this matter, the first respondent persistently sought to re-litigate substantive issues that were already *res judicata*. By launching an entirely meritless application for leave to appeal against what was a purely mechanical, procedural enforcement order, the first respondent has forced the applicant to incur unnecessary expenses, wasted time and has squandered valuable judicial time.

[40] The applicant's conduct amounts to what is commonly referred to as 'ambush litigation' and constitutes a clear abuse of the process of the Court. Such conduct borders on vexatious and cannot be countenanced. Consequently, this Court is satisfied that a departure from the conventional scale is fully justified, and a punitive costs order is warranted to mark this Court's displeasure.

[41] In the result, I make the following order;

1. Application for leave to appeal is dismissed.
2. The first respondent is ordered to pay the costs of this application for leave to appeal on the attorney-and-client scale.


CN NZIWENI
JUDGE OF THE HIGH COURT

Appearances:**Counsel for Applicant**

: Advocate D Maritz

Instructed by

: Venzi & de Beer Incorporated

Mr E de Beer

Counsel for Respondent

: Advocate R de Wet

Instructed by

: Gustav de Vries Attorneys Inc.

Mr G de Vries