



**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)**

CASE NUMBER: 2026-053518

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
<u>18 SEPTEMBER 2026</u> DATE	 SIGNATURE

In the application between:

TAHUTI TRADING 59 (PTY) LTD

APPLICANT

And

**THE COMMISSIONER FOR THE SOUTH
AFRICAN REVENUE SERVICE**

FIRST RESPONDENT

WILLEM JACOBUS VENTER

SECOND RESPONDENT

In re:

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

APPLICANT

and

JC POWER TRADING CC

(Registration Number: 2011/069346/23)

FIRST RESPONDENT

ABM COLLEGE SA (PTY) LTD

(Registration Number: 2013/016656/017)

SECOND RESPONDENT

**NGWATO ENGINEERING AND
MAINTENANCE (PTY) LTD**

(Registration Number: 2016/144615/07)

THIRD RESPONDENT

ANDERSONBROWN CC

(Registration Number: 2011/056965/23)

FOURTH RESPONDENT

ASGARD TRADING CC

(Registration Number: 2011/051706/23)

FIFTH RESPONDENT

BRAVOPLEX 115 CC (IN LIQUIDATION)

(Registration Number: 2010/109796/23)

SIXTH RESPONDENT

**FIREBREAK SAFETY APPLIANCES (PTY)
LTD**

(Registration Number: 2015/119944/07)

SEVENTH RESPONDENT

LIFHO CONSTRUCTION CC

(Registration Number: 2008/209086/23)

EIGHTH RESPONDENT

**MANGLO INDUSTRIAL AND MINING
SUPPLIER (PTY) LTD**

(Registration Number: 2014/054906/07)

NINTH RESPONDENT

CENTRAL SOURCING GROUP (PTY) LTD
(Registration Number: 2015/098396/07)

TENTH RESPONDENT

TRIEAGLE ENERGY (PTY) LTD
(Registration Number: 2016/314068/07)

ELEVENTH RESPONDENT

**ESOX MANUFACTURING FACTORY
(PTY) LTD**
(Registration Number: 2018/111648/07)

TWELFTH RESPONDENT

**ADVANCED PLANT INDUSTRIALISTS
(PTY) LTD**
(Registration Number: 2018/566965/07)

THIRTEENTH RESPONDENT

TAHUTI TRADING 59 (PTY) LTD
(Registration Number: 2013/094084/07)

FOURTEENTH RESPONDENT

**ZZYZX TRADING AND PROJECTS
(PTY) LTD**
(Registration Number: 2013/036013/07)

FIFTEENTH RESPONDENT

ALJ TECH (PTY) LTD
(Registration Number: 2019/003046/07)

SIXTEENTH RESPONDENT

**DOUBLE IMPACT PROJECTS (PTY)
LTD**
(Registration Number: 2016/178187/07)

SEVENTEENTH RESPONDENT

**IZIMVELO MINING LABOUR AND
PLANT HIRE CC**
(Registration Number: 008/256614/23)

EIGHTEENTH RESPONDENT

KEEWAVE TRADING 334 (PTY) LTD
(Registration Number: 2018/515531/07)

NINETEENTH RESPONDENT

AMIBASE (PTY) LTD
(Registration Number: 2016/047545/07)

TWENTIETH RESPONDENT

**DIBUSEENG BUSINESS
ENTERPRISE (PTY) LTD**
(Registration Number: 2014/067732/07)

TWENTY-FIRST RESPONDENT

**MPHEGOLLE TRADING
ENTERPRISE (PTY) LTD**
(Registration Number: 2015/343501/07)

TWENTY-SECOND RESPONDENT

JUDGMENT

FOURIE AJ

INTRODUCTION:

- [1] The current application is an application for leave to appeal in terms of Rule 49(1) of the Uniform Rules of Court as read together with Section 17(1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013.
- [2] The Applicant seeks leave to appeal against the whole of the Judgment and the Order of this Court, dated 2 June 2026. Although the Applicants do not state to which Court they want the matter to be referred for such appeal, it

is accepted that leave is sought to the full Court of this Division; alternatively, if the Court so finds, to the Supreme Court of Appeal.

- [3] The application for leave to appeal is opposed.
- [4] The Applicant has not, as is generally the norm, set out specific and numbered grounds of appeal, and an evaluation of the Application for Leave to Appeal seems to state rather in general terms the reasons why the Applicant is dissatisfied with the Order that was initially granted. Although certain paragraphs might resemble grounds of appeal, certain other paragraphs seem merely to expand upon the grounds of appeal, and it needs to be stated that the Notice of Application for Leave to Appeal as drawn by the Applicant seems to have been drawn as much with the grounds of appeal as with argument on why the grounds of appeal ought to succeed.
- [5] As such, I do not intend to repeat the nearly 17 pages of argument as presented by the Applicant. Something is, however, to be said in the manner in which the Applicant has presented its notice for leave to appeal. An application for leave to appeal ought rather to identify crisply the issues on which an Applicant wishes to rely, which issues can in Heads of Argument and ultimate argument to Court be expanded upon. Applications for leave to appeal are not designed for a rehearing of a matter and are generally for crisp issues canvassed before the Court *a quo*, which is already aware of all the underlying facts and issues between the respective parties, and are not designed for a re-trial or to raise arguments and issues that were not previously before the Court.

APPLICABLE LEGAL PRINCIPLES:

[6] In the matter of *Janson*¹ the Court held as follows, which is restated for purposes of convenience and legal clarity, as:

‘[10] The formulation for the test to be applied in applications for leave to appeal has been accepted and applied by our Courts in multiple judgments.²

[11] In the matter of *JACOBS*³ the full Court held as at paragraph 29 thereof, that it seems that Section 17(1) of the Act, construed as a whole, is a qualification of the principles laid down in *Sweni v Minister of Law and Order of the Republic of South Africa*⁴ assessed in the context of subsequent gloss afforded in decisions such as *S v Western Areas Ltd*⁵ and *Philan-Ma-Afrika v Mailulu*⁶. In these decisions it was held that what is of paramount importance in deciding whether a judgment is appealable is the interest of justice.

[12] In the matter of *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁷ the Court stated that:

“If the Court is unpersuaded of the prospects of success, it must still enquire whether there is a compelling reason to entertain the appeal. A compelling reason includes any important question of law or a discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.”

¹ *Janson v Ebundu – Leave to Appeal* (5767/2023) [2025] ZAMPMBHC 122 (29 September 2025).

² *Four Wheel Drive Assessory Distributors CC v Rethan* N.O. 2019 (3) SA 451 (SCA) at para 34; *Pretoria Society of Advocates & Others v Nthai* 2020 (1) 267 (LP) at para 5; *Vrystaat Munisipale Pensioen Fonds v The Pension Funds Adjudicator* 2019 JDR 0211 (FB) at para 4; *Visagie N.O. v MTN Group Limited* 2013 JDR 2853 (GSJ) at para 3.

³ *Jacobs v Beacon Island Shareblock* unreported (WCC Case Number A258/2018 dated 6 February 2019).

⁴ *Sweni v Minister of Law & Order of the Republic of South Africa* 1993 (1) SA523 (A).

⁵ *S v Western Area Ltd* 2005 (5) SA 214 (SAC).

⁶ *Philan-Ma-Afrika v Mailulu* 2010 (2) SA 573 (SCA).

⁷ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) at paragraph 2.

- [13] Post the amendment of the Act and the case law flowing thereafter, and for purposes of the current Judgment, it is deserving to merely restate that the position has significantly changed and it ought to be accepted that a general prospect of success or the belief that some or other Court might for some or other reason find differently than the Court *a quo* is not satisfactory for Leave to Appeal to be granted. Courts are unfortunately flooded with matters, and to unnecessarily proceed with matters with a view that a litigant might on a different day encounter a different Judge that might feel different and hold a different view on the case of a litigant is quite simply not enough. Leave to Appeal proceedings exist to weed out patent errors that occur when Judgments are handed down and to ensure that justice is ultimately done. Leave to Appeal ought not to be regarded as merely for the taking, especially where the matter might at first glance seem to be of a technical nature.
- [14] It unfortunately occurs ever so often that litigants try to persuade the Court, when an Application for Leave to Appeal is heard, that the technical nature of a matter is deserving of a re-evaluation of the matter by a different Court, seemingly in an attempt to have the Judge who dealt with the matter initially doubt his Order, and in the hopes of phrasing their argument before a different Judge or Judges differently to find ultimate favour with them or simply to delay the inevitable finalisation of the matter.
- [15] This Court is of the belief that Leave to Appeal ought to be reserved for when the Court is, with a degree of certainty, convinced that a different Court will come to a different conclusion in respect of the legal questions that have been posed by a litigant. Although I accept the bar ought not to be set unreasonably high, an order of this nature is not simply designed to cater for speculation.

EVALUATION OF GROUNDS FOR LEAVE TO APPEAL:

[7] The essence of the Applicant's grounds for leave to appeal can be pooled together under the following headings:

[7.1] The findings made in respect of the jurisdictional requirements of Section 163 of the Tax Administration Act, 28 of 2011.

[7.2] A challenge to the disregard of the Applicant's privacy.

[7.3] The manner in which the Tax liability was calculated.

[7.4] The finding of the Court that realisable assets may be disposed of or removed.

[7.5] The Court ought to have ordered a less intrusive order against the Applicants.

[7.6] The allegations that the Applicants ought never have been joined in the proceedings and have been mis-joined.

[7.7] A challenge to the ultimate cost order made against the Applicants.

[8] It was addressed by the Respondent as well as the Court with the Applicant that most, if not all, of the challenges raised by the Applicant in the current application for leave to appeal are new matters that were not previously before the Court and constitute an argument that has been formulated after the initial hearing and Judgment received.

[9] The ultimate heads of argument filed by the Applicant comprised another some 55 pages, most of which largely comprised the previous arguments raised by the Applicant and the so-called new arguments now raised in the application for leave to appeal. The Applicant argues that it is entitled to raise new issues in an application for leave to appeal where those issues relate to points of law.

[10] The argument of the Applicant is seemingly premised on the matter of *Minister of Justice Constitutional Development and Others v South African Litigation Centre and Others*⁸ in which the Court said the following:

‘But there is another consideration. It is that if a point of law emerges from the undisputed facts before the Court, it is undesirable that the case be determined without considering that point of law. The reason is that it may lead to the case being decided on the basis of a legal error on the part of one of the parties in failing to identify and raise the point at an appropriate earlier stage. But the Court must be satisfied that the point truly emerges on the papers, that the facts relevant to the legal point have been fully canvassed and that no prejudice will be occasioned to the other parties by permitting the point to be raised and argued.’

[11] The *rationale* for the aforesaid is obviously because of the test to be applied in applications for leave to appeal. The test is whether a different Court, confronted with the same matter the Court a quo was, would, under the applicable principles, come to a different conclusion. Accordingly, a Court of second instance and a Court of first instance can never come to the same conclusion if they are asked to decide a different legal conundrum.

⁸ Minister of Justice Constitutional Development and Others v South African Litigation Centre and Others (867/15) [2016] ZASCA 17; 2016 (4) BCLR 484 (SCA); [2016] 2 All SA 365 (SCA).

- [12] Where the application deals with issues previously before the Court, this Court remains unpersuaded by the Applicant's argument. The manner in which the Applicant phrases their argument disregards both the applicable legal principles to matters such as the one at hand and the *rationale* for the application and implication of such an order.
- [13] There are no reasonable prospects that a different Court would come to a different conclusion from the one this Court has come to.
- [14] In evaluating whether there is some other compelling reason why the appeal should be heard, the Court evaluates, amongst others, the new arguments as raised by the Applicant.
- [15] The Court has considered the argument of the Applicant, and the Court is similarly not persuaded that the argument was properly canvassed in the papers and that there would be no prejudice occasioned to permit the points to be raised and argued. The issues raised are neither novel nor do they require interpretation by another Court to lead the Court to believe that it would be in the interest of justice if leave to appeal on these grounds be granted.
- [16] The Applicant in argument seems to suggest that applications under Section 163 of the Tax Administration Act deal with high degrees of certainty on the jurisdiction requirements. The Applicant's proposition is simply not correct. Preservation orders expressly preserve a specific position pending the finalisation of investigations and ultimate resolution of issues between the parties. The existence of some doubt may indeed exist, but if the

reasonable apprehension is justified and satisfied, the jurisdictional requirements would be met.

- [17] The Court evaluated again the full submissions made by the parties and all the papers filed and, applying the relevant legal principles specifically as enunciated in *SARS v Tradex (Pty) Ltd*⁹ the Court remains unpersuaded on any of the grounds as raised by the Applicant that leave to appeal is warranted.

ORDER:

- [18] Under these circumstances and for all the reasons I have stated, the following Order is made:

[18.1] The application for leave to appeal is dismissed.

[18.2] The Applicant shall pay the Respondent's costs, including the costs of two Counsel, where so employed, on a party-and-party Scale B in respect of the more senior of the Counsel and Scale A in respect of the more junior of the two Counsel.


H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

⁹ SARS v TRADEX (Pty) Ltd and Others 2015 (3) SA 596 (WCC).

Counsel for the Applicant:

Adv Fourie

Instructed by:

Mfundo Sibiyi Attorneys

Counsel for the Respondents:

Adv Meyer together with Adv Storm

Instructed by:

GMI Incorporated

Judgment reserved on:

7 September 2026

Date of delivery:

18 September 2026