



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

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

In the application between:

CASE NUMBER: 3006/2024

TJP CAPITAL HOLDINGS (PTY) LTD

FIRST APPLICANT

JECSTRUCT (PTY) LTD

SECOND APPLICANT

And

JACOBUS THEROHN GELDENHUYS

THIRD APPLICANT

OLUF HENDRIK ERICHSEN N.O.

FIRST RESPONDENT

MICHELLE ALIDA ERICHSEN N.O.

SECOND RESPONDENT

(In their capacities as trustees of the
Oluf H Erichsen Family Trust)

ADV L NKOSI-THOMAS SC

THIRD RESPONDENT

In re:

OLUF HENDRIK ERICHSEN N.O.

FIRST APPLICANT

MICHELLE ALIDA ERICHSEN N.O.

SECOND APPLICANT

(In their capacities as trustees of the
Oluf H Erichsen Family Trust)

and

TJP CAPITAL HOLDINGS (PTY) LTD

FIRST DEFENDANT

JECSTRUCT (PTY) LTD

SECOND DEFENDANT

JACOBUS THEROHN GELDENHUYS

THIRD DEFENDANT

JUDGMENT

FOURIE AJ

INTRODUCTION:

- [1] The current application is an application for leave to appeal premised on Sections 17(1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013, together with Uniform Court Rule 49.
- [2] The Applicant seeks leave to appeal against the Judgment and Order of this Court of 21 July 2026.
- [3] The Applicant opposes the application for leave to appeal.

- [4] The Applicant has extensively and in 48 pages submitted their grounds for leave to appeal. 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] 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.
- [6] When the matter was ultimately heard, the application for leave to appeal and the respective Heads of Argument total an exorbitant number of pages in excess of 120.
- [7] The Applicant's application for leave to appeal was nearly equal in length to their Notice of Motion and founding papers in the main application.

APPLICABLE LEGAL PRINCIPLES:

- [8] To restate the applicable legal principles pertaining to applications for leave to appeal would serve no practical purpose. Counsel appearing for both matters are very senior and have correctly identified the principles this Court should apply. In so far as the same is necessary, the Court

repeats the sentiments displayed by the Courts in *Ramakatsa*,¹*Smith* ², *Mont Chevaux Trust*,³ and *Janson* ⁴.

- [9] Accordingly, what is required is a meaningful evaluation of whether there is a sound rationale to conclude that a different Court would reach a different conclusion than the Court *a quo*.
- [10] Unless there is a compelling reason, such as an important question of law or a discrete issue of public importance, that necessitates the matter to be heard by an Appellant Court, the aforesaid threshold has not been met. A Court will not entertain a matter on appeal simply because a matter is interesting, technical or of high monetary value.
- [11] The law reports are filled with litigious issues in which 50% of litigants who felt strongly about their case were ultimately found to be incorrect in the views of the courts dealing with those matters. Appeals are not designed for circumstances where litigants feel disgruntled with an outcome they believed they had good prospects of succeeding on when they initiated the matter. Appeals are designed for circumstances where the law or the facts were erroneously applied or identified to the degree that, if the same facts and arguments were presented before a different Court, a different outcome would have been reached.

GROUND FOR LEAVE TO APPEAL:

¹ *Ramakatsa v African National Congress* (unreported) SCA Case Number 274/2019 dated 31 March 2021

² *Smith v S* (475/10) [2011] ZASCA 15; 2012 (1) SA CR567 (SCA) (15 March 2011)

³ *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC)

⁴ *Janson v Ebundu* (5767/2023) [2025] ZAMPMBHC 122 (29 September 2025)

- [12] As stated previously, the Court will not repeat the nearly 50 pages of grounds for leave to appeal as stated by the Applicant. To do so would serve no practical purpose.
- [13] The essence of the application for leave to appeal is simply whether a different Court would find that good cause has not been shown under the auspices of Section 3(2) of the Arbitration Act, 42 of 1965, for the setting aside of the arbitration agreement.
- [14] The Court held initially that to determine that good cause has been shown, the Court has a wide mandate to evaluate all the relevant facts of the matter, and when evaluating all the relevant facts of the matter to make a determination on whether good cause has been shown, to deal with the matter in any other way would not constitute the Court's discretion being exercised judicially.
- [15] For purposes of the current enquiry, some distinction needs to be made in respect of whether the discretion of the Court was a discretion in the wide sense or a discretion in the narrow sense. For purposes hereof, the Court believes that the discretion of the Court to determine whether good cause has been established for purposes of Section 3(2) of the Arbitration Act is a discretion in the wide sense but, after the Court had found that good cause was indeed shown, the election by the Court to set aside the arbitration agreement is one exercised in the narrow sense. The Court accordingly believes that these two issues, as they might find application in the current matter, might be dealt with at separate stages of the enquiry in a different fashion. The Applicant not only complains that good cause has not been shown but also states that the Court's election to set aside the arbitration agreement was incorrect.

- [16] Initially, the Court took a holistic approach to evaluate the parties' actions, the delay caused by those actions, how the parties' actions were perceived, and all other objective facts. The Court's evaluation of these facts together led it to find that good cause has been shown. The Court reevaluated all submissions made by the parties to consider whether the Court would truly believe that a different Court, faced with the same facts and arguments, would reach a different conclusion. The Court is not persuaded that a different Court would come to a different conclusion on whether or not good cause has been shown.
- [17] The only remaining issue is for the Court to evaluate whether there is some other compelling reason within the contemplation of Section 17(1)(a)(ii) of the Act to refer the matter to be heard on Appeal.
- [18] The proposition was tabled by the Applicant that the matter is of some general importance to guide litigants on whether their conduct in the cause of arbitration or then repudiation, if it leads to that, in itself constitutes good cause. The difficulty with the aforesaid proposition is that good cause is not a principle designed to bind parties in future matters. Although it can serve as a guideline, each matter is to be evaluated on its own unique set of facts.
- [19] The principles relating to what ultimately constitutes good cause are settled legal principles, and the importance of the matter is importance *inter partes* rather than of general public importance. This Court is not persuaded that an Appeal Court ought to be burdened with hearing issues that arose from the current matter.

ORDER:

[20] 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 C in respect of the more senior of the Counsel and Scale B in respect of the more junior of the two Counsel.



H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Counsel for the Applicants: Adv B Boot SC and Adv M Louw
Instructed by: Van Rooyen and Associated Inc

Counsel for the Respondents: Adv GF Heyns SC
Adv M Jacobs
Instructed by: Seymore Du Toit & Basson Attorneys

Judgment reserved on: 17 September 2026
Date of delivery: 18 September 2026

