



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

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

18 SEPTEMBER 2026
DATE


SIGNATURE

In the application between:

CASE NUMBER: 4669/2024
And
CASE NUMBER: 5911/2024

WATERZONE (PTY) LTD

FIRST APPLICANT

LIDDLE CORNELIUS PETRUS

SECOND RESPONDENT

And

NTIMENG JABULANE JOHANNES

RESPONDENT

In re:

NTIMENG JABULANE JOHANNES

APPLICANT

And

WATERZONE (PTY) LTD

FIRST RESPONDENT

LIDDLE CORNELIUS PETRUS

SECOND RESPONDENT

DEPARTMENT OF TRADE AND INDUSTRY

THIRD RESPONDENT

RUZINHA SHAH

FOURTH RESPONDENT

JUDGMENT

FOURIE AJ

INTRODUCTION:

- [1] The current application is an application for leave to appeal premised on Section 16(1)(a)(i) read with Section 17(2)(a) of the Superior Courts Act, 10 of 2013.
- [2] The Applicant seeks leave to appeal against paragraphs 4, 5, and 6 of the Order handed down by this Court on 17 June 2026.
- [3] The application for leave to appeal is opposed.

[4] The Applicant has, in very vague terms, set out in more than 15 pages the premise on which the current application. 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.

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*

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).

*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.”

[13] Post the amendment of the Act and the caselaw 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.

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.

[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.

[16] The aforesaid is crucial, specifically under circumstances where a litigant does not rely on the second portion of the Act, being the portion dealing with some or other compelling reason why Leave to Appeal ought to be granted. Under certain circumstances, it might very well be important for an abstract legal principle or matters dealing with the general public interest to be tested on appeal in order for the legal position to be properly tested and captured. “

EVALUATION OF GROUNDS FOR LEAVE TO APPEAL:

[7] The essence of the Applicant's application for leave to appeal is that the Court *a quo* was too strict in applying relevant principles relating to Motion Court proceedings.

[8] During argument, it crystallised that the essence of the Applicant's leave to appeal centred on the Court *a quo*'s interpretation of the purported defence raised by the Applicant in respect of rectification of the mutual

separation agreement. The Applicants contend that the Court applied too rigid a test and, in essence, found that the Respondent needed to prove rectification to succeed, rather than merely alleging the existence of a defence. This is perhaps the first stumbling block for the Applicant as the court expressly highlighted the fact that the threshold is something less than proving ultimate rectification, the difficulty being, for the Applicant, that, to evaluate the merits of the defence, it can simply never be enough to make an unsubstantiated allegation in the hope that the court accepts same. When litigants deal sparingly with information at their disposal and don't place all the information at their disposal before a court, they do so at their own peril.

[9] In the Judgment of the Court *a quo*, the Court dealt specifically with matters such as *Wightman*, *Plascon-Evans*, *Stellenbosch Farmers Winery*, and *Soffiantini*⁸.

[10] All of the principles enunciated in the aforesaid matters, highlight that the raising of a defence needs to be:

[10.1] Real

[10.2] *Bona fide*; and

[10.3] Enough must be stated by a Respondent to enable the Court to conduct a preliminary examination to ascertain whether denials are not fictitious, intended merely to delay the hearing.

⁸ *Wightman t/a JW Construction V Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at 13.
Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984)
Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) (6 September 2002).
Soffiantini V Mould 1956 (4) SA 160 (E).

- [11] The Court was not satisfied initially that the purported defence by the Applicant was raised *bona fide* nor, under the principles of *Soffiantini*, that the Respondent provided enough evidence for the Court to be able to ascertain whether the denials were not fictitious or aimed at delay.
- [12] The fact of the matter is simply that the rectification the Applicant seeks is not the correction of a small misnomer or an insignificant term of an agreement. The rectification intends to alter the agreement in question in totality. The Court remains of the view that, given the facts of this specific matter, the threshold was not met, and a different court would not find otherwise.
- [13] Given the nature of the engagement between the parties and the underlying facts leading into the relationship and ultimate termination of same in part or in full, this Court simply cannot regard the purported defence of the Applicant as in good faith or honestly to satisfy whether a different Court will firstly evaluate whether the attempted defence is a *bona fide* dispute.
- [14] The Court initially found that the Applicant failed to adduce sufficient information to support the allegation that the mutual separation agreement stands to be rectified, and that the purported defence as prayed for was not sufficiently substantiated.
- [15] In certain circumstances, vague or even bald denials would be acceptable to be regarded as sufficient to constitute a *bona fide* and real dispute. The nature of the current matter, the allegations made, the manner in which the Respondents had been dealt with and the actions of the Applicant

themselves are indicative that in the current matter something more was required of the Applicant than what was advanced in opposition to the claim confronting the Applicant. Having considered again the submissions made by the respective parties, the Court remains unpersuaded that a different Court would come to a different conclusion than the Court *a quo*.

[16] The Court is further not persuaded that the Applicants have identified a compelling reason within the contemplation of Section 17(1)(a)(ii). The matter does not raise a novel or unsettled principle requiring appellant determination.

[17] The Court is similarly not persuaded that a different Court ought to evaluate the matter as prayed for by the Applicant.

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

Counsel for the Applicant: Adv Mahon SC together with
Adv Laughland

Instructed by: Brand Mullers Incorporated

Counsel for the Respondents: Adv Mosoma together with
Adv Mohlake

Instructed by: SMS Attorneys

Judgment reserved on: 2 September 2026

Date of delivery: 18 September 2026