



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

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

DATE: 27/08/2026

SIGNATURE

Case No: 2026-170750

In the matter between:

SAREL GERHARDUS SMIT
KOBUS VAN VUUREN
GRATIS LAW NPC

First Applicant
Second Applicant
Third Applicant

and

GOVERNMENT PENSIONS ADMINISTRATION AGENCY (GPAA) First Respondent
DIRECTOR: SPECIAL PENSIONS: KABELO JONATHAN N.O. Second Respondent
MINISTER OF DEFENCE & MILITARY VETERANS Third Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

- [1] On 17 August 2026 the applicants served a “*notice of motion*” which purports to be an notice of application for leave to appeal in terms of the provisions of rule 49(1)(b). The notice is accompanied by an affidavit deposed to be a certain Sande C S Msongelwa. In that notice and accompanying affidavit it is stated that the applicants apply for leave to appeal against the judgment and reasons of this court contained in the written reasons of 14 August 2026 and in terms whereof an application for review of a decision of the Respondents in terms of the Promotion of Administrative Justice Act (“PAJA”) was dismissed.
- [2] In terms of Consolidated Practice Directive 1 of 2024 the Applicants were notified that the application for leave to appeal will be conducted by a video link on 27 August 2026. During this hearing, only deponent to the affidavit referred to above appeared and informed this court that the first- and second applicants failed to gain access, but that the application can be disposed of on heads of argument filed on their behalf as well as the accompanying affidavit referred to above.

THE NOTICE OF APPLICATION FOR LEAVE TO APPEAL:

- [3] In terms of rule 49(1)(b) an applicant who seeks leave to appeal is required to file a notice, setting out the grounds upon which leave be sought clearly and concisely. This court must be satisfied, on rational reasons advanced therein, that there is a reasonable prospect that another court would uphold the relief sought in the main application, failing

which this court is enjoined by virtue of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013, to refuse the application. In *Songono*¹ it was held as follows:

"In attempted compliance therewith the applicant filed a document headed 'Application for leave to appeal' in which he purported to set out the grounds upon which leave to appeal was to be sought. These so-called 'grounds' constitute a diatribe of some 17 pages criticising the judgment, analysing (at time incorrectly) certain of the evidence and the findings made, putting forward certain submissions and quoting various authorities. This lengthy, convoluted and at times disjointed criticism of the judgment did not clearly and succinctly spell out the grounds upon which leave to appeal is sought in clear and unambiguous terms – indeed, it served more to deceive, particularly as, during the course of argument, there were several points which the applicant's counsel, Mr Bursey, sought to raise which were not indicated in the document".

- [4] This court has endorsed that position. In *Municipality of Thabazimbi*² it was held with express reference to the *Songono* judgment above that:

"Where a party fails to comply with the peremptory provisions of rule 49(1)(b) inasmuch as they do not set out the grounds of appeal in clear, unambiguous and succinct terms, the court hearing the application may, on that basis, dismiss the application".

- [5] *In casu*, the "notice of motion" gives notice that the applicants seek an order as follows:

¹ *Songono v Minister of Law and Order* 1996 (4) SA 384 (E).

² *Municipality of Thabazimbi v Badenhorst* 2024 JDR 0991 (GP) at para 17.

- "1. *Grating leave to appeal the judgment.*
2. *Disbursements costs order, including the costs of the dismissed application against any party opposing this application".*

[6] The notice therefore does not set out the grounds for the intended appeal succinctly and in clear grounds. Instead, an affidavit is attached to that notice which has the following salient features:

[6.1] The affidavit consists of 17 pages which deals *seriatim* with every paragraph of this court's judgment, similar to an answering affidavit;

[6.2] The affidavit contains various references to submissions made during the hearing, consisting of facts which were not contained in the founding affidavit and therefore constitutes another and further attempt to introduce evidence which were not contained in the founding affidavit;

[6.3] The affidavit contains annexures in the form of documents which are intended to address certain of the issues raised in the judgment, which were not attached to the original application;

[6.4] The affidavit is signed by an individual lay person who is not an admitted attorney or advocate, and the sole director of the Third Applicant.

[7] The affidavit accompanying the notice is irregular and does not constitute a notice in terms of rule 49(1)(b). The deponent to that affidavit is not allowed to represent any of

the Applicants and cannot make submissions on their behalf in documents placed before this court.³

- [8] Furthermore, that affidavit, which purports to be a notice in terms of Rule 49(1)(a), fits squarely into the description of the notice of appeal which was referred to in the *Songono* judgment above. It also consist of 17 pages, being nothing more than a diatribe which criticise every paragraph of this courts' judgment in an incoherent manner, impermissibly referring to facts which were not disclosed in the founding affidavit in the main application, without disclosing any tenable rationale why leave to appeal should be granted.
- [9] Significantly, the attempt to introduce grounds to establish leave to appeal does not deal with a material issue raised in paragraph 7(1) of the judgment, where it was held that the Applicants failed to institute the review proceedings timeously as required in section 7(1) of PAJA. In the purported application for leave to appeal there is an attempt to introduce evidence of various steps taken by the Applicants, unrelated to the institution of an application, but a complete failure to explain why the application was not lodged timeously.
- [10] In the premises, the Applicants failed to comply with the provisions of rule 49(1)(b) and the application stands to be dismissed on that basis. However, even if the purported notice in terms of rule 49(1)(b) be accepted in the form that it is, it once again fails to address the absence of a proper condonation application under section 9(1) of PAJA in the main application and under those circumstances there is no reasonable prospect that

³ See *Mvenya v Standard of South Africa Ltd and Another (21/46591) [2025] ZAGPJHC 406 (26 April 2025)* where reference was made *inter alia* to *Commissioner South Africa Revenue Services v Candice-Jean van der Merwe [2022] ZASCA 106; SATC 10 (30 June 2022)*.

another court will hold that the Applicants complied with their obligations in terms of section 7(1) of PAJA and/or section 9(1) thereof.

[11] The application for leave to appeal is therefore dismissed.

[REDACTED]

P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

Date application heard; 27 August 2026

Date judgment reserved; 27 August 2026

Date judgment delivered; 28/08/2026