



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED

DATE: 4 September 2026

SIGNATURE

Case number: 149050/2026
Heard on: 2 September 2026
Judgment: 4 September 2026

In the matter between:

Dlamini Thembeleli Headman

Applicant

and

Head Of Prison: Ebongweni
Super Maximum Correctional Centre

First Respondent

National Commissioner Of Correctional Service

Second Respondent

Head Of Prison: Kgosi Mampuru II Correctional
Service (C-Max)

Third Respondent

Judgment

Strijdom, J

1. In this matter the respondents apply for leave to appeal to the full court of this division, against order number 2 of my judgment handed down on 29 July 2026, wherein I ordered that the applicant be removed from the C Section of Kgosi Mampuru Correctional Facility ("KMMC") and be placed in the medium section of Westville Correctional Facility or any other medium correctional facility in the Province of KwaZulu-Natal.
2. The application for leave to appeal by the respondents is opposed by the applicant.
3. The ground of appeal is set out in the application for leave to appeal and is confined to security classification.
4. The test on leave to appeal is not whether this Court erred in its reasoning but whether an appeal court would come to a different conclusion and would, thus, give a different order.¹ Here again, the fundamental point of departure is that an appeal lies against an order and not the reasons.²
5. To succeed in this application the applicant must convince the Court that the requirements of s 17(1) of the *Superior Courts Act*, Act 10 of 2013 ("the Act"), are satisfied. These requirements are:

5.1 First, there is a reasonable prospect of success on appeal.

¹ *Four Wheel Drive Accessory Distributor CC v Rattan NO 2019 (3) SA 451 (SCA)* at [34].

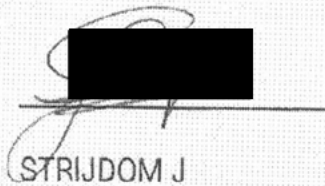
² See *South African Reserve Bank v Khumalo and Another 2010 (5) SA 449 (SCA)*; [2011] All SA 26; [2010] ZASCA 53 para 4

- 5.2 Secondly, there is some other compelling reason why the appeal should be heard.
- 5.3 Thirdly, the appeal does not fall within the ambit of section 16(2)(a) and s 17(1)(b).
- 5.4 Fourthly, the decision sought to be appealed does not dispose of all the issues in the case, s 17(1)(c).
6. An applicant for leave to appeal must convince the Court that on a sound rational basis, its prospects of success on appeal are not remote but have a reasonable and realistic chance of succeeding. Equally, a mere possibility of success on appeal is not enough.³
7. The respondents contended that the effect of ordering that the applicant be placed in a medium security facility is that his security classification has been changed from a maximum to medium under circumstances where there was neither a legal nor factual basis for doing so.
8. The court made no classification finding. What the court did was to set aside an unlawful transfer, a finding not appealed, and then, as the Constitution requires, granted effective relief under section 172(1).
9. On the respondents' answering affidavit, paragraph 4.7, upon completion of his maximum cycle at Ebongweni, they decided to transfer him to a medium facility in Pietermaritzburg.
10. The respondents concede that the classification issue was not placed before the urgent court. They say that they withheld it because it is "foreshadowed" for the appeal, and that they will apply to adduce it as further evidence. Leave to appeal must be sought on the record as it stands.
11. It was argued on behalf of the applicant that:

³ See *Kingfisher Fuels CC v BP Southern Africa (Pty) Ltd and Another* (2025) 1 JDR 1544 (GJ), para 46, page 12.

"An appeal that can succeed only if a court of appeal first grants an exceptional indulgence to admit evidence available all along is not an appeal with a sound, rational prospect of success."

12. In respect of the grounds of appeal raised by the respondents, my judgment deals with the facts and the law as presented by the parties and how the court arrived at each conclusion on the contentions raised by the parties.
13. When the facts and the law were examined, there is, in my view, no sound and rational basis for the conclusion that the appeal would have a reasonable prospect of success.
14. I am also of the view that there are no compelling reasons why the appeal should be heard.
15. In the result, the application for leave to appeal is dismissed with costs on the party and party scale. Costs are to be taxed in accordance with Scale "B".


STRIJDOM J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

For the Respondents:

Adv. N. Mashabela

Instructed by:

State Attorney

For the Applicant:

Adv. D.B. Melaphi

Instructed by:

M.E. Makgopa Attorneys