

SOUTH AFRICA / JUDGMENT

Isago at N12 Development (Pty) Ltd v PKX Capital (Pty) Ltd (87615/2019) [2022] ZAGPPHC 954 (9 December 2022) [2022] ZAGPPHC 954

COURT

North Gauteng High Court, Pretoria

BEFORE

Khashane La M. Manamela

CASE / FILE NUMBER

87615/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 87615/2019

REPORTABLE:

NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED.
9
DECEMBER 2022
In

the matter between:

ISAGO
AT N12 DEVELOPMENT (PTY) LTD
Applicant
(Registration
No: 2006/029695/07)
and
PKX
CAPITAL (PTY) LTD
Respondent
(Registration
No: 1998/003584/07)
In

re: PKX
CAPITAL (PTY) LTD
Plaintiff
ISAGO
AT N12 DEVELOPMENT (PTY) LTD
Defendant
DATE
OF JUDGMENT: This judgment was
handed down electronically by circulation to the parties'
representatives by email. The date and time of
hand-down is deemed to
be 10h00 on 9 DECEMBER 2022.

JUDGMENT

(APPLICATION FOR LEAVE TO APPEAL)

KHASHANE MANAMELA, AJ

Introduction

- [1] The Applicant, Isago at N12 Development (Pty) Ltd (Isago), seeks leave to appeal the judgment granted by this Court on 24 March 2022 in favour of the Respondent, PKX Capital (Pty) Ltd (PKX), in terms of which PKX was granted leave to amend part of its particulars of claim to the summons. The summons had been issued at the instance of PKX against Isago in November 2019 for payment in the amount of R180 million in respect of services allegedly rendered in terms on an agreement concluded between the parties. Isago denied liability and is defending the action. The trial in the action was held between 2 and 4 November 2021, but it is yet to be concluded by the delivery of closing address or argument by counsel and judgment. The trial was postponed sine die to give way to the conclusion of the ensuant interlocutory proceedings.
- [2] In Isago's view the granting of leave to amend PKX's particulars of claim, sought and granted amidst the trial in the action, was erroneous on a number of grounds. PKX opposes this application for leave, naturally associates itself with the favourable judgment and, consequently, seeks that the application be dismissed with costs.
- [3] On 21 October 2022, Mr PG Cilliers SC and Mr RJ Groenewald appeared for Isago, and Mr IM Semanya SC appeared for PKX. I reserved this judgment after listening to oral argument by counsel. Counsel had also filed comprehensive written submissions for which I am grateful.

Grounds of appeal and opposition (summarised)

- [4] In its notice or application for leave to appeal, Isago stated that it seeks to appeal against the whole of the judgment and order I granted on 24 March 2022 ('the judgment') to the Full Court of this Division, alternatively to the Supreme Court of Appeal.

[5] Isago's 'legal and factual grounds' relied upon for its application, essentially, are to the following effect, as paraphrased from the application:

[5.1] first ground of appeal: under this ground, it is argued that the Court erred in finding that the proposed amendment introduced a triable issue;

[5.2] second ground of appeal: the Court is said to have erred under this ground for finding in the impugned judgment that Isago carried the onus regarding 'various aspects' of the objection raised, and

[5.3] third ground of appeal: this ground is to the effect that the Court erred in finding in its judgment as unmeritorious Isago's ground of opposition that the cause of action sought to be introduced by PKX is not supported by the evidence, and, further, that Isago's ground of opposition that no triable issue is introduced must fail.

[6] As already stated, PKX opposes the application and labels the abovementioned grounds of appeal by Isago 'subjective in nature'; unpersuasive and lacking evidential indicators as to how the Court erred in its findings. Also, PKX raises the following three grounds or points of opposition:

[6.1] the judgment is non appealable;

[6.2] the appeal lacks reasonable prospects of success, and

[6.3] the absence of interests of justice to warrant the granting of leave to appeal.

[7] I deal with both the grounds of appeal as advanced by Isago, the points in opposition raised on behalf of PKX, and submissions on behalf of both parties, below.

Grounds of appeal, opposition and submissions on behalf of the parties (discussed)

Statutory provisions and test for leave to appeal

[8] Section 17(1) of the Superior Courts Act 10 of 2013 provides what could be termed the 'test' applicable to an application for leave to appeal, as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a)

(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'

[underlining added for emphasis]

- [9] The decision of the Land Claims Court in *The Mont Chevaux Trust v Tina Goosen & 18 Others*[1] per Bertelsmann J dealt with section 17(1)(a)(i) of the Superior Courts Act. It was held in this decision that the use of the word ‘would’ (as opposed to ‘could’) in the provision is an indication that the threshold for leave to appeal has been raised and, further, that the word ‘would’ indicates a measure of certainty that another court will differ from the judgment sought to be appealed.[2]
- [10] Section 17(1)(a)(ii) of the Superior Courts Act enjoins the Court seized with an application for leave to appeal to enquire whether there is a compelling reason for the appeal to be heard.[3] This enquiry is facts-sensitive and, therefore, each matter would be decided on its own facts.
- [11] Further, other considerations beyond the abovementioned statutory provisions may be relevant including where the material case is of substantial importance to the prospective appellant; where the decision sought to be appealed against involves an important question of law[4] or where the interests of justice warrant the granting of leave to appeal.[5]

Is the order appealable?

- [12] The contention by PKX that the order sought to be appealed is not appealable, in my view, requires to be dealt with first due to its context. The contention is met by an opposite one from Isago. I deal with submissions on behalf of both parties, next.
- [13] The submissions on behalf of Isago under this subheading include the following:
- [13.1] that, before the advent of the current constitutional era, leave to appeal against the granting of leave to amend particulars of claim was considered non-appealable.[6] But this position has since evolved to allow appealability of interlocutory orders. This is buttressed by the approach taken by the Supreme Court of Appeal in *Director-General Department of Home Affairs v Islam*[7] per Maya P (as she then was) that, whilst traditional considerations are still important, in appropriate circumstances the court may dispose of the traditional requirements if such an approach would advance the interests of justice.[8]
- [13.2] that, the order sought to be appealed against in this matter is final in effect and, thus, incapable of alteration by a court outside of an appeal. This is so, as an order or judgment may be granted on the freshly introduced cause of action indicative of the creation of definitive rights. This is notwithstanding that all evidence have been adduced by both parties and that PKX’s entire defence is premised on a completely different cause of action, the submission is concluded in this regard.
- [13.3] Overall, in Isago’s view, the circumstances of this matter are peculiar (i.e. the seeking and granting of amendment to a pleading in order to introduce an issue that is clearly not triable after the trial has commenced and evidence long concluded) to warrant the granting of leave to appeal in the interests of justice.

[14] Counsel for PKX made submissions including the following for the dismissal of the application for leave to appeal on the basis of non-appealability of the impugned order:

[14.1] that, an application for leave to amend is by its nature an interlocutory application, has no effect of finality of the matter and, therefore, is generally non-appealable;[9]

[14.2] that, an interlocutory application is not dispositive of the matter, as with applications for leave to amend, as such an order 'leaves the plaintiff's claim intact and not decided upon, it is prima facie an order which has not the force of a definitive sentence and therefore not appealable';[10]

[14.3] that, granting leave to appeal sought by Isago at this juncture would result in piece-meal appeals, an undesirable step in legal proceedings consistently discouraged by the courts;[11]

[14.4] that, Isago's alleged prejudice due to the granting of leave to amend the particulars of claim is not clearly spelt out as to its nature and extent and, consequently, doesn't expand to Isago's mere say so;

[14.5] that, inarguably the judgment sought to be appealed against has no effect of disposing of any issue or a substantial portion of the relief claimed in the main action;[12]

[14.6] that, it is not generally in the interests of justice to subject to an appeal process interlocutory relief as this would defeat the very purpose of that type of relief,[13] and

[14.7] that, the appeal court would remit the matter back to this Court without dispensing of any issue.

Proposed amendment did not introduce a triable issue (i.e. the first ground of appeal)

[15] As the first ground of appeal, Isago contends that the Court erred in finding that the proposed amendment introduced a triable issue. The submissions on behalf of Isago in this regard include the following:

[15.1] that, the proposed amendment introduces a fresh cause of action, enforceable against a distinctly different party;

[15.2] that, an appeal would have a reasonable prospect of success as a court at appellate level would come to a different conclusion than this Court's finding that there is a triable issue;

[15.3] that, the Court's holding or 'reasoning' that the causes of action may be different, but they derive from the same agreement conflates the following concepts, which are entirely different:

(a) '[t]he introduction of a fresh cause of action and the consideration whether such fresh cause of action introduces a triable issue; and ... [t]he introduction of further terms of an agreement already pleaded which are the subject of an already existing triable issue';

[15.4] that, another court would find that the proposed amendment introduces a completely fresh cause of action, albeit derived from the same detailed and complex contract, as opposed to simply introducing further terms of the agreement. During the hearing Mr Cilliers SC for Isago, as I understood him, added that the amendment seeks to introduce a mutually exclusive cause of action to the one already pleaded.

[15.5] that, the holding by this Court that the identified statements (as quoted in the impugned judgment) of Colonel Kubu are suggestive of ‘the existence of evidence directed towards the cause of action sought in the amendment’ is flawed, as the statements, among others, are not facts supporting the proposed amendment, but mere ‘expression of an (incorrect) opinion on the existing cause of action’, contrary to available evidence and without support from any evidence, and

[15.6] that, another court would find that the dispute sought to be introduced by the amendment is irrelevant to the objective proved facts and therefore not viable nor established by the evidence. There is no triable issue raised by the amendment sought, save for prejudicial harassment value to Isago. The prejudice suffered in this regard is incapable of compensation by an award of costs, this submission is concluded.

[16] As in the application for leave to amend, PKX’s case is that the amendment sought and granted introduced a triable issue. During the hearing Mr Semenya SC for PKX, as I understood him, posed an almost rhetorical question why there was no assertion or objection to the cause of action as pleaded before the impugned amendment, but only after the amendment was sought when the pleaded material emanates from the same agreement.

Isago carried the onus regarding ‘various aspects’ of the objection raised (the second ground)

[17] Isago’s so-called second ground of appeal is directed towards some dicta in the judgment to the effect that Isago was saddled with an onus regarding ‘various aspects’ of the objection Isago raised. It is submitted this finding is at variance with the established legal position that an applicant for leave to amend ought to establish that the other party will not be prejudiced by the amendment.[14] The finding has the effect of placing a reverse onus on Isago, despite it being only a respondent/defendant, the submission continues.

[18] It is further submitted under this ground that the aforementioned finding of this Court caused prejudice incapable of cure by an order for costs and that the so-called reverse onus materially informed the outcome contained in the impugned judgment, which would be reversed by another court.

[19] Isago argued that Isago’s grounds of appeal, including this one, ‘are subjective in nature and are neither persuasive nor evidential as to how the learned Judge erred in his findings’ and, further, the grounds of appeal constitute ‘points of argument at the hearing and can still be raised in the written submissions for the determination during the main action’.

Finding of lack of merit in the point of opposition that the cause of action sought to be introduced is unsupported by evidence (i.e. the third ground)

- [20] Isago's third ground of appeal is to the effect that this Court erred in finding that Isago's ground of opposition that the cause of action sought to be introduced is not supported by the evidence must fail due to lack of merit.
- [21] I must say – with respect - that I find this ground to be a different presentation of the first ground, dealt with above, especially when one considers Isago's counsel's conclusion on this third ground that, 'another court would indeed find that the evidence does not support the proposed amendment and that Isago's ground of opposition that no triable issue is introduced must succeed'.

Other compelling reasons and public interest element warranting the grant of leave to appeal

- [22] It is also submitted on behalf of Isago that other compelling reasons exist why the leave to appeal ought to be granted, including that (a) the impugned decision involves an important question of law^[15] without the benefit of constitutional judgments on the material question or requiring determination of the impact of the Constitution

on the existing authorities, and (b) this matter is of substantial importance to the parties.^[16] It is also submitted that there is a broader public interest element to grant leave to appeal in this matter due to the matter being of extreme importance to the parties.

- [23] On the other hand, it is submitted on behalf of PKX that this application for leave to appeal does not disclose any judgments which conflict with the judgment sought to be appealed.
- [24] Further, it is denied by PKX that it is in the interest of justice for leave to appeal to be granted in this matter. This includes with regard to Isago's contention that the timing of the amendment or delay in making an amendment and the fact that evidence had already been concluded renders the application to be in the interest of justice. For an amendment will invariably be allowed save where it is made in bad faith or will cause an injustice,^[17] as the issue of delay bears no reference on whether or not to allow an amendment.^[18] Overall, it ought to be borne in mind that the question of interest of justice does not only concern the interests of Isago as the applicant, but includes the interests of PKX too, as both parties ought to be served with justice.

Piece-meal appeals

- [25] It is also submitted on behalf of PKX that this Court ought to be allowed to hand down its judgment in the main action and with any party aggrieved by the outcome only then exercising its right to appeal. Any appeal at this stage is unwarranted as it would result in a piece-meal appeal, the submission concludes.

[26] Further, it is argued for PKX that our courts generally discourage granting leave to appeal or appeals which would result in piece-meal appeals. This aspect, as borne by the jurisprudence and the other aspect that the judgment sought to be appealed against is not dispositive of the main action or a substantial part thereof, justify the conclusion that no other court will come to a different

conclusion.

[27] Obviously, Isago's case is that there is no room for piece-meal appeals as the current appeal deals with a completely different aspect of the matter, deserving of immediate attention, than any other possible appeal after the judgment in the action.

Reasonable prospects of success

[28] Isago contends, including on the basis of what appears above, that an appeal would have a reasonable prospect of success including on the ground that an appellate court would find that there is no triable issue raised by the amendment granted, thus differing with this Court's conclusion.

[29] PKX, on the basis of what appears above, contends that Isago's application for leave to appeal bears no reasonable prospects of success. Further, the following submissions are made on behalf of PKX under this rubric:

[29.1] that, as already stated above, Isago's grounds of appeal 'are subjective in nature and are neither persuasive nor evidential' as to how the Court erred in its findings;

[29.2] that, Isago's grounds of appeal constitute points of argument at the hearing or trial still to be concluded and can still be raised as part of the submissions for the determination of the main action, and

[29.3] that, viewed from the criteria for granting leave to appeal to a litigant set out in section 17[19] of the Superior Court Act, Isago's application has no reasonable prospects of success as the grounds predicated the application fail to satisfy the statutory criteria.

Conclusion

[30] I indicated at the beginning of this judgment that, gratefully, counsel on both sides filed very comprehensive heads of argument. Although, I have quoted from and paraphrased most of the material, I did not reflect every aspect relied upon for purposes of this judgment. Naturally, such an approach is not warranted. There is, equally, no need to criss-cross every submission and contention made the parties with a comment by the Court. Besides, I handed down what I consider a very detailed judgment – sought to be appealed - whose contents, in my respectful view, still pivot most aspects of this judgment.

- [31] I still hold the view that the proposed amendment introduced a triable issue. The existence of such triable issue is not only located in the nature and extent of the words used in the impugned judgment, but objectively. Also, the existence of a triable issue is not the same as saying that the issue introduced by the amendment would succeed in establishing or contributing to establish Isago's claim in the trial. That is the task still awaiting this Court in the judgment to be handed down after the conclusion of the pending trial.
- [32] Further, I don't really understand how my alleged finding in the impugned judgment that Isago carried the onus regarding 'various aspects' of the objection raised, as being a ground of appeal. I explicitly stated in the same judgment on this issue that 't]his is not the same as saying [Isago] has the onus regarding the overall determination by this Court on the amendment [as that] is the duty placed on [PKX]'. [20] But even if this finding is erroneous it is incapable ipso facto of grounding any appeal even against an attempt by Isago to elevate it to such a level as being considered to have materially informed the outcome contained in the impugned judgment.
- [33] But overall, I respectfully agree with PKX's view that the order or judgment sought to be appealed is interlocutory in nature and, therefore, not capable of appeal. There are indeed interlocutory orders capable of appeal, but the facts surrounding the impugned order or judgment does not place it within interlocutory orders of the latter genre. The order made has no final or definitive effect. [21] It would not even require alteration by a court of appeal, now or even in the future, as the order left the issues in the action 'intact and not decided upon'. [22] No dose of constitutionalism would alter this position, in my respectful view. But, to the extent that the issues are relevant to an appeal they may still be raised in any appeal to follow the judgment in the action, once handed down, by anyone aggrieved by same. Otherwise, the appellate courts will be burdened with undesirable 'piece-meal appeals'. [23]
- [34] I also could not find any other compelling reasons for granting leave to appeal. This includes the alleged important question of law, [24] with its alleged need for constitutionally-inclined scrutiny. Also, the main matter is no doubt of substantial importance to the parties, but the issues in the order sought to be appealed although important are not substantially or extremely so. And I agree with PKX that the impact of the interests of justice is double-sided and, therefore, finding application to Isago in as much as they do PKX. It is my view that the interests of justice are not implicated at the moment.
- [35] Therefore, I find Isago's application for leave to appeal to lack reasonable prospect of success. Also, there is no other compelling reason advanced why the appeal should be heard and the interests of justice are definitely not implicated. Consequently, it is my view that no other court would reach a different conclusion to the one in the judgment or order Isago seeks leave to appeal. The application will fail and Isago shall be held liable for the costs thereof. I also find that the employment by PKX of two counsel, one of whom is senior counsel, was justified.

Order

[36] In the premises, I make the following order:

- a) the applicant's or defendant's application for leave to appeal is dismissed with costs, including costs consequent to the employment of two counsel, with one of the counsel a senior counsel.

Khashane La M. Manamela

Acting Judge of the High Court

DATE OF HEARING:

21 OCTOBER 2022

DATE OF JUDGMENT: 9 DECEMBER 2022

Appearances:

For the Applicant/Defendant: Mr

PG Cilliers SC

Mr RJ Groenewald

Instructed by:

Van Hulsteyns Attorneys, Johannesburg

c/o Lee Attorneys, Pretoria

For the Respondent/Plaintiff: Mr

IM Semenya SC

(Heads of Argument by Mr IM Semenya

SC and Mr M Matera)

Instructed by:

Maluleke Msimang Attorneys, Pretoria

- [1] The Mount Chevaux Trust v Tina Goosen & 18 Others (LCC14 R/2014) (03 November 2014); 2014 JDR 2325 (LCC) par 6, cited with approval by the Full Court of this Division in Acting National Director of Public Prosecutions & Two Others v Democratic Alliance, In re Democratic Alliance v Acting National

Director of Public Prosecutions & Three Others (19577/2009) GDHC (24 June 2016) par 25.

- [2] Ibid.

- [3] Erasmus, Superior Court Practice (2021) A2-56.

- [4] Erasmus, Superior Court Practice (2021) A2-56-57.
- [5] City of Tshwane v Afriforum 2016 (6) SA 279 (CC) par 40.
- [6] Webber Wentzel v Batstone 1994
- (4) SA 334 (T).
- [7] Director-General Department of Home Affairs v Islam 2018 JDR 1292 (SCA).
- [8] Director-General Department of Home Affairs v Islam 2018 JDR 1292 (SCA) par 10.
- [9] Independent Examinations Board v Umalusi and Others (83440/2019)
- [2021] ZAGPPHC 12 (7 January 2021) par 16, relying on Herbstein & Van Winsen 5th Ed, 2009 chapter 39 at 1205, held: 'An interlocutory order is an order granted by a court at an intermediate stage in the course of litigation, settling or giving

directions with regard to some preliminary or procedural question that has arisen in the dispute between the parties. Such an order may be either purely interlocutory or an interlocutory order having final or definitive effect. The distinction between a purely interlocutory order and an interlocutory order having final effect is of great importance in relation to appeals. The policy underlying statutory provisions prohibiting or limiting appeals against interlocutory orders is the discouragement of piece-meal appeals." [italics added for emphasis]

- [10] Pretoria Garrison Institutes v Danish Variety Products (Pty), Limited 1948
- (1) SA 839 (A).
- [11] Health Professions Council of South Africa and another v Emergency Medical Supplies and Training CC t/a EMS (435/09)
- [2010] ZASCA 65; 2010 (6) SA 469 (SCA); [2010] 4 All SA 175 (SCA) (20 May 2010) par 25 the SCA held that: 'A court, when requested to grant leave to appeal against orders or judgments made during the course of proceedings, should be careful not to grant leave where the issue is one that will be dealt with in isolation, and where the balance of the issues in the matter have yet to be determined. Of course, where a litigant may suffer prejudice or even injustice if an order or judgment is left to stand – as would have been the case in [National Director of Public Prosecutions v King (86/09)
- [2010] ZASCA 8 (8 March 2010)] – then the position will be different.'
- [12] Zweni v Minister of Law and Order 1993
- (1) SA 523 (A) at 532-533, the Appellate Division (the predecessor to SCA) held, among others, as follows: "In determining the nature and effect of a judicial pronouncement, 'not merely the form of the order must be considered but also, and predominantly, its effect' A 'judgment or order' is a decision which, as a general principle, has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second,

it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings ... The second is the same as the oftstated requirement that a decision, in order to qualify as a judgment or order, must grant definite and distinct relief ...”

- [13] President of the Republic of South Africa v Democratic Alliance and Others [2019] ZACC 35 at par 27, the Constitutional Court held that, generally, it is not in the interests of justice for interlocutory relief to be

subject to appeal as this would defeat the very purpose of that relief.

- [14] Erasmus, Superior Court Practice (2021) Vol 2, D1-334; Wigham v British Traders Insurance Co Ltd 1963

- (3) SA 151 (W).

- [15] Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020

- (5) SA 35 (SCA) at par [2] and Tansnat Durban (Pty) Ltd v Ethekwini Municipality (unreported, KZD case no D4178/2020, dated 8 February 2021) at par 13.

- [16] African Guarantee and Indemnity Co Ltd v Van Schalkwyk 1956

- (1) SA 326 (A) at 329; Svenska Oljeslageri Aktiebolaget v Lewis Berger & Sons Ltd 1960

- (2) SA 601 (A) at 607H–608A; Odendaal v Loggerenberg (2) 1961 (1) SA 724 (O) at 727C; Attorney-General, Transvaal v Nokwe 1962 (3) SA 803 (T) at 807A; Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd 1986 (2) SA 555 (A) at 560I; Tansnat Durban (Pty) Ltd v Ethekwini Municipality at par 13.

- [17] Affordable Medicines Trust and Others v Minister of Health and Another [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) the Constitutional Court held that an amendment will always be allowed unless it is made in bad faith or will cause an injustice. The relevant paragraph provides: “The principles governing the granting or refusal of an amendment have been set out in a number of cases. There is a useful collection of these cases and the governing principles in Commercial Union Assurance Co Ltd v Waymark NO. The practical rule that emerges from these cases is that amendments will always be allowed unless the amendment is mala fide (made in bad faith) or unless the amendment will cause an injustice to the other side which cannot be cured by an appropriate order for costs, or “unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed.”¹¹ These principles apply equally to a Notice of Motion. The question in each case, therefore, is what do the interests of justice demand.”

- [18] Macsteel Tube and Pipe, a division of Macsteel Service Centres SA (Pty) Ltd v Vowles Properties (Pty) Ltd [2021] ZASCA 178 Supreme Court of Appeal had this to say about the delay in bringing an application for leave to amend: “Insofar as Macsteel contended that it

would be prejudiced by the granting of the amendment because of Vowles' inordinate delay in bringing its application for amendment of its particulars of claim, it bears noting that a litigant's delay in bringing forward its amendment is not a ground for refusing the amendment".

[19] Par 8, read with pars 9-10, above.

[20] Par 51 of the judgment in respect of the leave to amend handed down on 24 March 2022.

[21] *Zweni v Minister of Law and Order* 1993

(1) SA 523 (A) at 532-533.

[22] *Pretoria Garrison Institutes v Danish Variety Products (Pty), Limited* 1948

(1) SA 839 (A).

[23] *Health Professions Council of South Africa v Emergency Medical Supplies* 2010

(6) SA 469 (SCA); [2010] 4 All SA 175 (SCA) par 25.

[24] *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020

(5) SA 35 (SCA) at par 2; *Tansnat Durban (Pty) Ltd v Ethekekwini Municipality* at par 13.

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