

SOUTH AFRICA / JUDGMENT

Sable Place Properties 106 (Pty) Ltd and Others v Visa Security Group (Pty) Ltd and Another (Leave to Appeal) (081761-2025) [2025] ZAGPPHC 764 (18 July 2025)

[2025] ZAGPPHC 764**COURT**

North Gauteng High Court, Pretoria

BEFORE

Minnaar

CASE / FILE NUMBER

081761-2025

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG DIVISION:****PRETORIA)****Date: 18 July 2025****Case number:**

081761-2025

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED

DATE 18 July 2025

SIGNATURE

In

the matter between:

SABLE
PLACE PROPERTIES 106 (PTY) LTD
First
Applicant
REDEFINE
PROPERTIES LTD
Second Applicant
TADVEST
COMMERCIAL (PTY) LTD
Third Applicant
And
VISA
SECURITY GROUP (PTY) LTD
First
Respondent
MINISTER
OF POLICE
Second
Respondent
(REGISTRATION NUMBER:
2015/224619/07)

JUDGMENT

MINNAAR AJ,

- [1] On 17 June 2025, in the urgent court, I granted the order as prayed for by the applicants. The following relief, relevant to the first respondent, was granted:
- a. That the first respondent, and any other persons, entities or bodies, and employees, as the case may be, acting through the first respondent, is hereby ordered to forthwith vacate the applicants' property at Hertford Office Park, 9[...] B[...] Road, Vorna Valley, Sandton, Gauteng.
 - b. That the first respondent, and any other persons, entities or bodies, as the case may be, acting through, or under the first respondent, are hereby restrained, and interdicted, from attending upon the applicants' property at Hertford Office Park, 9[...] B[...] Road, Vorna Valley, Sandton, Gauteng, with the aim and sole, or other purpose of:
 - i. Demanding that the applicants employ them as security service providers, at the applicants' property at Hertford Office Park, 9[...] B[...] Road, Vorna Valley, Sandton, Gauteng; and
 - ii. Frustrating, and interfering with, the applicants' business thereat; and
 - iii. Harassing and intimidating tenants, employees and security service providers of the applicants; and

- iv. Interfering with, harassing or intimidating the applicants' managers, and/or security service providers; and
 - v. Without limiting the generality of the aforesaid, prohibited from doing anything whatsoever related to or in connection with the harassment, intimidation and assault of the applicant's employees, its security or other contractors, tenants and security service provider and preventing the applicants' security and other contractors from performing their daily duties and functions.
 - c. That the first respondent be ordered to pay the costs of this application on scale C in terms of Rule 67, read with Rule 69.
- [2] Later that same day, the first respondent submitted an application for leave to appeal against my order. In the application for leave to appeal, the first respondent stated that the order was granted by way of an ex tempore judgment, without reasons. This is not factually correct, as the order granted was in terms of a draft order that counsel handed up for the applicants.
- [3] Together with the application for leave to appeal, the first respondent also sought written reasons for the order. These were provided on 24 June 2025. The first respondent's application for leave to appeal was not supplemented on receipt of the written reasons.
- [4] Applications for leave to appeal are dealt with in terms of the provisions of Rule 49 of the Uniform Rules of Court read with sections 16 and 17 of the Superiors Courts Act 10 of 2013 ("the Superior Courts Act").
- [5] It is trite that the grounds of appeal must be clearly and succinctly set out in clear and unambiguous terms to enable the court and the respondent to be fully informed of the case the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal. Rule 49(1)(b) is peremptory in this regard.[1]
- [6] In its application for leave to appeal, the first respondent alleges that the court erred on the following aspects:
- a. Entertaining the application on the urgent roll where the applicants had failed to satisfy the test prescribed under Rule 6(12)(b).
 - b. Failed to consider that the applicants would be afforded substantial redress in due course by advancing a claim for damages in due course.
 - c. The existence of the agreement relied on by the first respondent constituted a material dispute of facts, incapable of resolution on the affidavits, alternatively given that the applicants were seeking final relief, on the application of the Plascon Evans rule. As such, the first respondent's version ought to have prevailed in that the said version was not palpably false, untenable

or far-fetched since the first respondent tendered undisputed evidence of the agreement concluded with the applicants, through

their agent.

- d. The court ought to have found that the first respondent's version is presented with admissible evidence and is uncontested on the affidavit and should have been accepted.
- e. The court ought to have found that on application of the legal test holding that a tacit contract has been established in that the most probable conclusion from all of the proven facts and circumstances is that a contract came into existence between the first respondent and the applicants. In this regard, it is stated that the first respondent tendered evidence of unequivocal conduct by the contracting parties (Strive as the agent of the applicants and the first respondent), giving rise to an inference of consensus on a balance of probabilities.
- f. Based on the proven agreement, which the applicants had not terminated, the first respondent was entitled to continue providing security services at the applicants' property through its agreement directly with the applicants.
- g. Erred in finding that evidence existed and was tendered of imminent and/or any harm or risk presented by the first respondent on the applicants' property and/or the tenants at the property. The court ought to have found that the lack of evidence rendered the alleged harm and/or risk to the applicants' property and/or tenants as unsubstantiated and fell to be rejected. The court ought to have found that the first respondent had raised a valid defence to the order for ejectment and that the applicants had

failed to make out a case for the final interdict sought.

- h. The urgent application ought to have been dismissed with costs, including the costs of two counsel.
 - i. Failed to exercise a discretion when awarding costs on Scale C, in circumstances where the matter was not complex, with the facts being straightforward, the papers were not voluminous, and the matter lasted well under an hour.
- [7] In concluding the application for leave to appeal, it is the first respondent's case that there are reasonable prospects of success on appeal and that leave to appeal should be granted to the Full Bench of this court.
- [8] In the first respondent's supplementary heads of argument in the application for leave to appeal, it is recorded that the first respondent will not persist with the application for leave to appeal against the cost order. During the argument, the first respondent's counsel also did not pursue the leave to appeal on the urgency aspect. All that remained was the first respondent's reliance that the court erred concerning the adjudication of disputes of fact in application proceedings.

[9] Section 17(1) of the Superior Courts Act provides the test applicable to applications for leave to appeal. Section 17(1) reads 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.”

[10] Section 17(1)(a)(i) of the Superior Courts Act was dealt with in the decision of the Land Claim Court in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 (JDR 2325 (LCC); 2014 JDR 2325 in which Bertelsmann J held that the use of the word “would” (as opposed to could) in the provisions is an indication that the threshold for leave to appeal has been raised. It was further held that the word “would” indicates a measure of certainty that another court will differ from the judgment appealed against.[2]

[11] On the rigidity of the threshold, Plaskett AJA (as he then was) in which Cloete JA and Maya JA (as she then was) concurred, wrote the following *S v Smith* 2012 (1) SACR 567 (SCA) ([2011] ZASCA

15) at paragraph 7:

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success. That the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[12] Under section 17(1)(a)(ii) of the Superior Courts Act, the Court determining an application for leave to appeal ought to enquire

whether there is a compelling reason for the appeal to be heard.[3] The enquiry is factual and, therefore, each application ought to be decided on its own facts.

- [13] Other considerations beyond the abovementioned statutory provisions would include where the material case is of substantial importance to the appellant and where the decision sought to be appealed against involves an important question of law[4] or where required by the interests of justice.[5]
- [14] The first respondent contends that, based on the facts and the law, and considering a measure of certainty implied by the word “would”, that a court of appeal could reasonably conclude differently from the conclusion that this court arrived at.
- [15] It is further the contention of the first respondent that I erred in my approach to considering and adjudicating the evidence in the application, on the basis that the first respondent failed to prove the existence of an agreement between the applicants and the first respondent. It is submitted that I ought to have held that a material dispute of facts existed and the evidence stood to be considered in accordance with the trite principles laid down in *Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Ltd*
- [1984] ZASCA 51; 1984 (3) SA 623 (A) at 635 H – I.
- [16] In the first respondent’s supplementary heads of argument, and during submissions by counsel, reference was made to the judgment delivered by the Supreme Court of Appeal on 4 July 2025 in *Van den Berg Water (Pty) Ltd t/a Oasis Water Lynnwood and Others v Oasis Water (Pty) Ltd and Another* (Case no 989/2023); *Van Schalkwyk Water CC t/a Oasis Water Kimberley and Another v Oasis Water (Pty) Ltd* (Case no 988/2023); *Oasis Water (Pty) Ltd and Another v Wynand Albertus Bester and Another* (Case no 1120/2023) [2025] SASCA 98 (4 July 2025) (‘the Oasis judgment’).
- [17] In the Oasis judgment, the Supreme Court of Appeal restated that, when relief sought that is final in effect, it is required to establish a clear right, and an issue such as the balance of convenience does not arise. Schippers JA (writing for the Court) also again confirmed the trite manner to establish disputes of fact in holding that a further consequence of the status of orders serving as final interdicts is that the Plascon-Evans rule applies, and dispute of fact essentially fall to be determined on the respondents’ version, unless it is farfetched or untenable. Reference was again made to the oft-quoted passage by Harms in *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 at para 26:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.”

- [18] Considering the submissions made, the written reasons provided, and based on the facts and the law, I am not convinced that a Court of Appeal could reasonably conclude differently from the conclusion reached by me. I cannot find that the first respondent has prospects of success and that those prospects are not remote, but have a realistic chance of succeeding.
- [19] If regard is had to my judgment, read with the application for leave to appeal, I conclude that, although subjectively to the first respondent the case might be of substantial importance, the application lacks any semblance of prospect of success, let alone reasonable prospect of success.
- [20] No other compelling reason is advanced as to why the appeal should be heard, and the interest of justice is not implicated. Neither is a valid, important question of law raised.
- [21] As the provisions of section 17(1)(a) of the Superior Courts Act clearly demand, the application must be dismissed, as leave to appeal may only be given when the court believes that the intended appeal “would have” a reasonable prospect of success. The first respondent has failed to establish a case that another court would reach a different conclusion or outcome from the order in this case.
- [22] The applicants seek a dismissal of the application for leave to appeal with costs on the scale as between attorney and client, alternatively with costs to be ordered on Scale C.
- [23] There is no basis for a punitive costs order. Both sides employed the service of senior counsel, and as such, the costs on Scale C are justified.
- [24] Consequently, I make the following order:
1. The application for leave to appeal is dismissed.
 2. The first respondent to pay the costs of the application for leave to appeal on Scale C.

Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

For the applicants: Adv G T Avvakoumides SC Instructed by Mark Efstratiou Inc For the first respondent: Adv P G Cilliers SC with Adv T Ngakane Instructed by Adams & Adams Heard on: 9 July 2025 Date of judgment: 18 July 2025

- [1] Songomo v Minister of Law and Order 1996 (4) SA 384 (E) at 385J – 386A
- [2] Mont Chevaux Trust at par
6. See further Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others (1957/09)

[2016] ZAGPPHC 489 (24 June 2016) par 25

[3] Erasmus, Superior Court Practice (2021) A2-56 to 57

[4] Erasmus, Superior Court Practice (2021) A2-56 to 57

[5] City of Tshwane v Afriforum 2016 (6) SA 279 (CC) par 40

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