

SOUTH AFRICA / JUDGMENT

Zwane v Astrotail 109 (Pty) Ltd and Others (B812/2023) [2025] ZAGPPHC 426 (8 May 2025)

[2025] ZAGPPHC 426

COURT

North Gauteng High Court, Pretoria

BEFORE

B Neukircher

CASE / FILE NUMBER

B812/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Case

No. B812 / 2023

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: YES

DATE 08 May 2025

SIGNATURE

In

the matter between:

PRINCESS
VUYISWA ZWANE
APPLICANT
and
ASTROTAIL 109 (PTY)
LTD (In liquidation) (Registration
No.2013/100859/07)
COMPANIES
AND INTELLECTUAL
PROPERTY
COMMISSION
SOUTH
AFRICAN REVENUE SERVICE
JACOBUS
JOHANNES NEL N.O
(In
his capacity as Trustee of the JJ Nel Junior Trust)
BRUNHILDA
ELSE NEL N.O (In her capacity as Trustee
of the JJ Nel Junior Trust)
TIELMAN CHRISTIAAN
ROOS N.O (In his capacity as Trustee of
the JJ Nel Junior Trust)
HENNIE
DANIEL VERMAAK N.O (In his capacity as
Trustee of the JJ Nel Junior Trust)
FUCHSIA
TRADING (PTY) LTD
(Registration
No.2003/027649/07)
FIRST
RESPONDENT
SECOND
RESPONDENT
THIRD
RESPONDENT
FOURTH
RESPONDENT
FIFTH
RESPONDENT
SIXTH
RESPONDENT
SEVENTH
RESPONDENT
EIGHTH
RESPONDENT

JUDGMENT

NEUKIRCHER, J

1] On 26 July 2024, I handed down judgment in the main application in which I dismissed the application, made no order on the counter-applicant and granted a specific costs order against the applicant. The basis upon which the application was dismissed was that I found that the applicant did not have locus standi to bring the business rescue application.

2] The applicant then filed an application for leave to appeal. It is common cause that this was out of time and an application for condonation was then duly launched. This was opposed by the fourth to eighth respondents who filed lengthy affidavits in an attempt to persuade the court that the application for leave to appeal was doomed on the merits, as well as on the point in limine, and that there were no prospects of success on appeal.

3] The fourth to eighth respondents also filed a supplementary affidavit in which they sought to place new information before me which they argued had a bearing on the outcome of the application for leave to appeal, and which they argued was even more determinative of the fact that there were no prospects of success on appeal on the merits of the application itself.

4] I must point out at this stage that it was argued before me that even though the judgment dismissed the application on the point in limine, and that the court did not deal in any substantive manner with the merits of the business rescue application, it is the order, and not the reasons, that are appealed against.

5] I was thus urged to take the lack of merits of the application itself into account when deciding whether to grant leave to appeal or not.

6] But in my view, to decide merits of the application for purposes of the decision on leave to appeal is not appropriate in this matter. I must decide whether leave to appeal should be granted on the facts I took into account when dismissing the application itself – the merits did not form part of that decision.

7] Insofar as the application for leave to appeal is concerned, I am of the view that condonation should be granted for the late filing of the application and I am also of the view that there are prospects of success on appeal and that leave to appeal should be granted to the Full Court of this Division. The fourth to eighth respondents may then, if they decide to do so, seek leave to adduce further evidence on appeal, and it will be the decision of the appeal court whether to accept or refuse the further evidence.

ORDER

1. Condonation is granted for the late filing of the application for leave to appeal.
2. Leave to appeal is granted to the Full Court, Gauteng Division, Pretoria.

3. Costs are costs in the appeal.

B NEUKIRCHER

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 8 May 2025.

For the Applicant

: Adv E Coleman Instructed by

: Ralulimi Attorneys Inc. For the 4th to 8th Respondents : Adv MP Van Der Merwe SC assisted by Adv E Ward Instructed by

: Macrobert Attorneys Matter heard on

: 29 April 2025

Judgment

date

: 08 May 2025

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