

**IN THE HIGH COURT OF SOUTH AFRICA**



**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NUMBER: 2015/07148**

**DELETE WHICHEVER IS NOT APPLICABLE**

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

In the matter between:

**ZURICH INSURANCE COMPANY**

**SOUTH AFRICA LIMITED**

**Applicant**

And

**GAUTENG PROVINCIAL GOVERNMENT**

**Respondent**

Coram: Wepener J

Date of hearing: 15 June 2021

Date of judgment: 15 June 2021

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## JUDGMENT

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**Wepener, J:**

[1] The applicant seeks leave to appeal a judgment delivered by me on 2 March 2021. The notice of application for leave to appeal sets out a large number of issues. These were reduced to three during argument namely: that the order issued by me is incapable of practical enforcement and secondly; that the claim had become prescribed and thirdly; that the rock surrounding the tunnel, although part of the works, did not form part of the property insured.

[2] The respondent's resisted all three grounds. However, I am of the view that another court may, reasonably, come to a different conclusion on these three issues.

[3] I consequently grant leave to appeal to the Supreme Court of Appeal on the following issues:

1. Whether the order issued by this court is capable of practical enforcement;
2. Whether the respondent's claim had become prescribed;
3. Whether the rock surrounding the void formed part of the property insured.

[4] I order that the applicant is to ensure that the record of appeal is suitably truncated in order to omit those parts of the record that will not have a bearing on the issues to be considered by the Supreme Court of Appeal.

[5] The Costs of the application for leave to appeal are to be costs in the appeal.



**W.L. Wepener**

Judge of the High Court of South Africa

**Appearances**

Counsel for the Applicant: C.D.A. Loxton SC with D. Smith

Attorney for Applicant: Knowles Husain Lindsey Incorporated Ref: Mr. P. Ferreira

Counsel for the Respondent: A. Subel SC with A.C. Botha SC

Attorney for the Respondent: Werksmans Attorneys Ref: Mr. D. Willans