

(CKJ Transcription Services) ke

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 44832/2019

DATE: 2022-08-18

DELETE WHICHEVER IS NOT APPLICABLE  
 (1) REPORTABLE: NO  
 (2) OF INTEREST TO OTHER JUDGES : NO  
 (3) REVISED

DATE: 26/08/2022 SIGNATURE

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In the matter between

GOMWE AND TOFIELD

Applicant

and

PICK N PAY

Respondent

## J U D G M E N T

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**WEPENER, J:** This is an application for leave to appeal in the interlocutory order issued by me recently regarding discovery.

Until the Constitutional Court's judgment in *Tshwane City v AfriForum* 2016 (6) SA 279 CC at paragraph 40 interlocutory orders of this nature were regarded as non-appealable.

However, in that judgment the Court referred *inter alia* to the principles that were applicable up to that time and referred *inter alia* to *Zweni v Minister of Law and Order of the Republic of South Africa 1993 (1) SA 523 (A)* at 523(I) to 533(B).

Having looked at the judgment of the Constitutional Court I am of the view that the well-established principles regarding appealability of such interlocutory orders were not thrown overboard, but only qualified by the words that the  
10 interest of justice should be served when such leave to appeal is sought.

Although the test has therefore been widened in the *Zweni* judgment the well-established principles that led to the test of the interest of justice, as I have indicated have not been overruled.

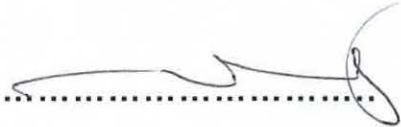
One such test is whether the judgment or order is dispositive of the main matter and I can add or substantially dispositive thereof, as was stated in *Zweni*. Of course, in this matter it is not so. It is purely a technical argument about the  
20 listing of documents.

I have had regard to the original notice of motion and what relief was sought, the judgment given, as well as the heads of argument that served before me today.

I am of the view that there is no interests of justice that will be served by granting leave to appeal or that another

Court may come to a different decision.

In the circumstances leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to be 'J. Wepener', written over a horizontal dotted line.

**WEPENER, J**

**JUDGE OF THE HIGH COURT**

10 **DATE:** .....