IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 6189/2019

In the matter between:

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS, FORESTRY AND FISHERIES	Second Applicant
and	
B XULU & PARTNERS INCORPORATED	First Respondent
INCOVISION (PTY) LTD	Second Respondent
(Reg No: 2017/157169/07)	
SETLACORP (PTY) LTD	Third Respondent
(Reg No: 2017/21874/07)	
FIRST NATIONAL BANK OF SOUTH AFRICA	Fourth Respondent
BARNABUS XULU	Fifth Respondent
INVESTEC BANK	Sixth Respondent
REGISTRAR OF DEEDS, PIETERMARITZBURG	Seventh Respondent

REGISTRAR OF DEEDS, CAPE TOWN Eighth Respondent

In re:

THE DEPARTMENT OF AGRICULTURE,

FORESTRY AND FISHERIES First Applicant

THE DEPARTMENT OF ENVIRONMENTAL

AFFAIRS, FORESTRY AND FISHERIES Second Applicant

and

B XULU & PARTNERS INCORPORATED First Respondent

THE SHERIFF OF THE HIGH COURT

FOR PRETORIA CENTRAL, MR TF SEBOKA N.O. Second Respondent

STANDARD BANK OF SOUTH AFRICA Third Respondent

FIRST NATIONAL BANK OF SOUTH AFRICA Fourth Respondent

BARNABUS XULU Fifth Respondent

Hearing dates: 20 and 21 May 2021 via Teams

Judgment date: 7 June 2021 (delivered via email to the parties' legal representatives)

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

PANGARKER, AJ

1. On 4 May 2021, I granted the following orders in a contempt of court application against the first and fifth respondents *(the respondents)*, who apply for leave to appeal that judgement *(the main judgment)*. The parties are referred to herein as in the main judgment.

Orders

In the result, I grant the following orders:

1. It is declared that the first respondent, B Xulu and Partners Incorporated (BXI) is in contempt of the following orders granted under case number 6189/19:

1.1 paragraphs 3.2.1 and 3.2.3 of the order granted by Rogers J on 21 August 2019;

1.2 paragraph 144 (e) of the order granted by Rogers J on 30 January 2020;

1.3 paragraphs 1 and 3 of the order granted by Smith J on 5 October 2020.

2. It is declared that the fifth respondent, Mr Barnabas Xulu (Mr Xulu), in his capacity as director of the first respondent and personally is in contempt of the following orders granted under case number 6189/19:

2.1 paragraph 4.1.6 of the order granted by Smith J on 12 October 2020 as amended on 15 October 2020;

2.2 paragraphs 6 and 7 of the order granted Binns-Ward J on 25 November 2020;

2.3 paragraph 4 of the order granted by Binns-Ward J on 27 November 2020.

3. The first and fifth respondents are ordered to pay a fine of R30 000 jointly and severally, the one paying the other to be absolved, by no later than 12h00 on Friday 7 May 2021, such fine being payable at the office of the Registrar of this Court. Failing such compliance, the fifth respondent is sentenced to 30 days' imprisonment.

4. The fifth respondent is ordered to surrender the Porsche 911 Carrera with registration number CA 3302 (the Porsche) by no later than 12h00 on Friday 7 May 2021 to the sheriff or deputy sheriff of Cape Town, or any other sheriff in whose area of jurisdiction the Porsche is found/located, for safekeeping by the sheriff, Cape Town, pending finalisation of the remaining matters (including appeals) under case number 6189/19. Failing compliance with this order, the fifth respondent is sentenced to 30 days' imprisonment.

5. The fifth respondent is sentenced to 30 days' imprisonment, wholly suspended for 3 (three) years on condition that he is not again committed for contempt of Court in case number 6189/19, committed during the period of suspension.

6. *The first and fifth respondents are precluded from launching any further applications against the applicants in relation to any matters involving, relating to or arising from the disputes and judgments under case number 6189/19, unless and until they have purged their contempt as set out in the preceding paragraphs. This order (paragraph 6) does not apply to pending matters before Zilwa J.*

7. *The first and fifth respondents are ordered to pay the second applicant's costs on an attorney and client scale and such costs shall include the costs of two counsel where so employed.*

8. *A copy of this judgment shall be forwarded to the Legal Practice Council, Western Cape, for its information and attention.*

2. The leave to appeal application was due to be heard virtually on Microsoft Teams on 20 May 2021 but was eventually heard the next day. The respondents were represented by different counsel, Mr Shai of the Pretoria Bar, while the DEA (*second applicant*) was once more represented by Ms Bawa SC, on instruction of Mr Manuel of the State Attorney, Cape Town.

3. Paragraphs 3 and 4 of the orders were to have been complied with by 12h00 on Friday 7 May 2021. On 6 May 2021, Mr Xulu addressed a letter directly to me, emailed to my registrar and including Mr Manuel, which I summarise as follows: the letter was marked as *"urgent"* and *"private and confidential"* (on page 2 of the letter),

referring to the main judgment; at paragraph 2 thereof Mr Xulu reserves his and his practice's *(BXI)* rights of appeal and enquires from me as to how I envisage that the fine of R30 000 (paragraph 3 of the order) would be paid to the registrar of this Court, as it is common cause that his and BXI's bank accounts were frozen in accordance with orders granted under case number 6189/19, which has rendered him unable to transact and unable to generate revenue and collect fees for services rendered. He requested and would appreciate my urgent reply while considering his options prior to the payment deadline the next day, 7 May 2021 at 12h00. The letter was signed by Mr Xulu as director of BXI. There was no mention of Ndumiso Attorneys which represented the respondents in the contempt application. While I found a letter addressed to me directly and marked *"private and confidential"* quite surprising, as a matter of courtesy and decency, I requested the registrar to send an email to Mr Xulu informing him that I am *functus officio* in respect of the judgment delivered on 4 May 2021. Mr Manuel was included in the email.

4. Not unsurprisingly then on 7 May 2021 at 11h45, 15 minutes before the dreaded 12h00 deadline to pay the R30 000 fine and surrender the Porsche, a Notice of Application for Leave to Appeal and Rule 45A stay of execution were served on my registrar. On reading the documents, I noticed that the document which purported to be an affidavit of Mr Xulu in support of both applications was not signed by him as the deponent and not commissioned by a Commissioner of Oaths as required by the Regulations governing the administration of an Oath or Affirmation. The registrar communicated proposed dates for the hearing of the applications and pointed out that the document was neither signed nor commissioned. The date of 20 May 2021 at 09h00 for hearing of the leave to appeal

and Rule 45A applications was confirmed. On Monday 10 May 2021, I received Mr Xulu's signed and properly commissioned affidavit.

5. As has become par for the course in this matter, there ensued further developments prior to the hearing of the leave to appeal application at 09h00 on 20 May. At 08h30, a half hour before the Teams hearing in the leave to appeal, my registrar handed me an email addressed by Mr Ndumiso and sent at 19h10 to the Judge President's registrar on 19 May 2021. The email copied in the DEA's legal representatives, Mr Shai, and my registrar, and referred to an attached letter addressed for the Judge President's urgent attention. The letter referred to a petition brought by Mr Xulu and BXI in terms of rule 49 (18), requesting the Judge President to direct that all proceedings in case number 6189/19 be halted and be referred to the Judicial Services Commission (JSC). The letter indicates further that the substantive reasons are contained in the petition and that the leave to appeal (in respect of my judgment) is also implicated in the petition. Mr Ndumiso requested that the leave to appeal should await the Judge President's decision on the petition and that the submissions were made on his understanding of rule 49(18).

6. After reading the letter and email, and shortly before 09h00, on my request, the registrar addressed an email to the Judge President's registrar, including all the legal representatives in the leave to appeal, and indicated that I had received Mr Ndumiso's email and his attached letter to the Judge President and awaited further direction in respect of the respondents' (Mr Xulu and BXI) petition. At 09h00, the Teams meeting commenced, duly recorded. I placed on record my receipt of the letter at 08h30, the registrar's email to the Judge President's registrar and enquired

whether anyone had received an outcome/feedback regarding the petition. Mr Shai indicated that a petition was indeed filed and proceeded to place on record how the matter had been handled, the implication for his clients of the orders which I had granted and that they await the direction of the Judge President regarding the petition. Ms Bawa stated that she had not seen the content of the letter nor the petition and submitted that the matter before me was not an appeal but a leave to appeal application and that in her view rule 49 (18) does not apply. She submitted that I was still seized with the leave to appeal application. Mr Shai's submission was that I was required to wait for the Judge President's direction. I enquired pertinently as to Mr Shai's instructions, to which he responded that as there were constitutional issues involved, the outcome of the petition and the Judge President's directions were quite important.

7. After considering counsels' submissions, I took a brief adjournment during which time I determined from the registrar that at that stage, there was no response from the Judge President's registrar. When the meeting resumed, I placed this fact on record and postponed the leave to appeal application to 2 June 2021 for virtual hearing. The legal representatives were requested to update me should there be an outcome regarding the petition, and everyone exited the hearing. At 09h44, the Judge President's registrar informed per email that the Judge President cannot intervene in the matter – all the legal representatives were included in this email. Shortly thereafter Mr Manuel requested that I hear the leave to appeal application that same day (20 May), however, as I had an opposed application (three applications) due to commence at 11h00, I was not available. The virtual hearing of

the leave to appeal and rule 45A applications was confirmed for Friday 21 May 2021 at 10h00.

8. On 21 May, I heard argument on the leave to appeal application and reserved judgment until today 7 June 2021. Yet again, there are further developments. On Friday afternoon (4 June 2021), while I was out of chambers during lunch, my registrar received an email from Mr Ndumiso, which was also addressed to Mr Manuel and includes Mr Xulu. The email refers to a supplementary affidavit of Mr Xulu; yet, aside from a filing notice, no such affidavit was attached as it seems that it was blocked by the Judiciary and Department of Justice servers (Mr Manuel had also reported the same problem). This morning, shortly after 09h00, I received from my registrar, Mr Manuel's affidavit in response to Mr Xulu's affidavit referred to above. At that stage, Mr Xulu's affidavit had still not been emailed nor delivered to my registrar. It caused me to request of the registrar to contact Mr Ndumiso telephonically to provide Mr Xulu's affidavit which was delivered at approximately 09h45 this morning.

9. I have read the very late affidavit of Mr Xulu, which deals with averments and allegations of impropriety and alleged perjury by Ms Bawa and Mr Manuel during the virtual hearing of this application on 21 May 2021, in that they allegedly mislead me when asserting that the only accounts which were frozen pursuant to the Smith J order of 12 October 2021, were those of BXI. In summary, Mr Xulu refers to two First National Bank accounts (62446673320 and 74703203609), the former being a personal account and the latter being a BXI business cheque account, which FNB advised on 13 October 2020, were attached in terms of a Court order. He alleges

that Mr Manuel was aware of these accounts falling under the order, yet failed to disclose this and through an instruction to Ms Bawa on 21 May 2021, mislead me. He attaches the email from FNB, and leaves the materiality and relevance of this information *"in the Court's hands"* (paragraph 20 of Mr Xulu's supplementary affidavit), yet also requests that I report Mr Manuel and Ms Bawa's conduct to the Legal Practice Council.

10. In a very detailed affidavit, Mr Manuel sets out his response to the alleged non-disclosure, the details of the bank accounts received from FNB, that the bank's email did not disclose the name of the account holders, that he had no reason to doubt the correctness of information received from FNB in November 2020 and that the allegations of perjury and misleading of the Court during the hearing of the leave to appeal application are unfounded. Various averments and responses by Mr Manuel need not lengthen this judgment, though I have considered same this morning.

11. Mr Xulu and BXI were legally represented in the contempt application and in the leave to appeal application. The lateness of the supplementary affidavit is questionable given that the leave to appeal application, which was recorded was heard on 21 May 2021 and the date for judgment indicated to the legal representatives is today, 7 June 2021. Judgment would have been delivered at 09h00 today but for these new developments, and it has now been delayed for a few hours to deal with the affidavits and make adjustments to this judgment. My further comments on these developments are as follows: the information regarding the above-mentioned bank accounts fell within the knowledge of Mr Xulu yet was not

addressed in his answering affidavit in the contempt application; and secondly, the allegation that the DEA's legal representatives deliberately failed to disclose the information to me or wilfully mislead me during proceedings cannot be sustained when I have regard to the affidavits, the contempt application, the record of the virtual hearing and my corresponding notes on the day. Thirdly, there is a lack of information regarding the accounts. Whether FNB failed to disclose information or not is not an issue I need to address in this judgment. As to the materiality and relevance of the information submitted by Mr Xulu at this late stage, presumably to support the view that a R30 000 fine cannot be paid, my respectful view is that the information should have been disclosed in the answering affidavit and submissions should have been made during argument on 19 March 2021. Whilst I have indeed taken cognisance of the two affidavits presented to me this morning, the information presented to me does not change the eventual outcome of this judgment.

12. During the hearing on 21 May, Mr Shai did not persist with the rule 45A application. It was common cause that the filing of the leave to appeal application suspends the orders granted on 4 May 2021. **Regarding the leave to appeal application, I consider the grounds under the paragraphs below – the grounds are indicated in bold underlined Italics for ease of reference.**

13. ***I misconstrued the merger in judgement doctrine that treats a cause of action as extinguished once a judgement has been given on it***

This ground of appeal relates to the Rogers J *rule nisi* granted on 21 August 2019 which the respondents argued were finalised by the learned Judge's judgment

delivered on 30 January 2020. I deal with these orders in paragraphs 28 to 39 of the main judgment. The submission is that the *rule nisi* did not survive the merger into the January 2020 order. The leave to appeal is sought so that the Full Bench may provide *"clarity on this legal issue and it is in the interests of justice and the rule of law that the status of the merger in judgment doctrine in our law be clarified for all litigants and judges"* (excerpt, paragraph 8 of Mr Xulu's affidavit).

14 In support of the merger in law argument, the applicants refer me only to a Canadian authority ***Hislop v Canada (Attorney General) [2007] 1 S.C.R. 429 (S.C.C)***. The only authority I have been able to find on this aspect relates to ship arrests or admiralty matters – see ***MT Pretty Scene: Galsworthy Ltd v Pretty Scene Shipping S.A. and Another [2021] ZASCA 38 at paragraphs 63 to 65*** and ***Owners of the MV Silver Star v Hilane Limited [2014] ZASCA*** **194 at paragraph 19,** which refer to English arbitration awards governed by English law. The merger in law argument fails to consider that Rogers J had ordered at paragraph 3.2 of his August 2019 order that the interdict granted against BXI in paragraphs 3.2.1 and 3.2.3 thereof, were to prevail until finalisation of the matter or a Court order permitting that these orders (the interdict) be discharged.

15. ***Mr Xulu did not ignore his court-ordered obligations and took positive, reasonable, and practical measures to seek a rescission of the order and pursue an appeal in the SCA***

It is common cause that a rescission application is pending before Zilwa J and that same was launched three days before I heard the contempt application (paragraph

5, main judgment). A prior similar application was dismissed by Slingers J (paragraph 12, main judgment). My judgment details at length with the six orders which the DEA sought to hold the respondents in contempt of and whether the DEA had proved fulfilment of the four requirements for a finding of contempt of court in respect of each of these orders (see paragraph 22, main judgment). The judgment found BXI and Mr Xulu had not complied with the Court orders and there is no need for further elaboration on this issue.

16. ***I overlooked the clear and unequivocal evidence that the judgment of Rogers J was procured by fraud and perjury on the part of the director-general***

I was not required in the contempt application to have made determinations as to the evidence either accepted or rejected by Rogers J (or any of the other Judges, for that matter) in the matter which resulted in his judgment of 30 January 2020. This ground of appeal has no foundation and ignores the ambit of the proceedings which I was required to determine. Furthermore, I was also not required to determine whether the orders granted by Rogers J were correct or valid.

17. ***I misdirected myself in concluding that the orders issued by Smith J were valid when the Judge had acted without jurisdiction and authority***

In paragraphs 5, 12, 48, 54 and 56 of my judgment, I refer to the respondents' defence that Smith J lacked jurisdiction to have granted the orders which he did in October 2020. In doing so, I was cognisant of and acknowledged that there was a pending rescission application which was due to be heard by Zilwa J. The evidence

of both parties in the contempt application and submissions were certainly considered in reaching the conclusions which I did, and I refer to it at various places in my judgment. At the time that the contempt application was brought and subsequently argued on 25 February 2021, the Smith J orders were neither rescinded nor set aside. The legal principles and requirements for a finding of contempt, which are discussed in the judgment, refer.

18. I erred in law by finding that a party must simply comply with Court orders he is appealing or rescinding; that there is no lawful basis for directing that Mr Xulu and BXI be precluded from launching any further applications against the DEA (paragraph 6 of the orders granted) and that such order is unconstitutional

Firstly, the respondents certainly do not take issue that I misunderstood the legal principles applicable to contempt of court applications (see paragraphs 18 to 23 of the judgment). Secondly, a bald assertion is made that a party who seeks to rescind an order need not comply with the order. It must be remembered that Mr Masuku, counsel for the respondents in the contempt application, agreed with Ms Bawa that any rescission application does not suspend an order. Secondly, I certainly noted at paragraph 14 that a petition was filed in respect of the Rogers J judgment of 30 January 2020 and his refusal of leave to appeal in September 2020. The petition application was accompanied by a condonation application.

19. Ms Bawa submitted that there was no response from the registrar of the SCA regarding the condonation application and petition. I refer to the judgment of ***Myeni v***

***Organisation Undoing Tax Abuse and Another* [2021] ZAGPPHC 56,** where the Full Court hearing an urgent petition in terms of section 18(4) of the Superior Courts Act 10 of 2013, had to determine a preliminary point related to a petition to the SCA. In the matter, the respondents indicated in a letter to the Judge President that the appellant had not filed her application for leave to appeal timeously at the SCA in terms of section 17 of the Act and thus consequently the order of Tollmay J granted on 27 May 2020 was still of force and effect. At paragraph 19 of the judgment, the Full Court considered what the effect would be on the principal judgment of the lodgement of a petition after the right to appeal had lapsed. It held that the principal judgment or order continued to remain in effect for the mere fact that the service of an application to condone the late filing of the petition to the SCA does not suspend the operation or execution of the order (see also ***Panayiotou v Shoprite Checkers (Pty) Ltd and Others* 2016 (3) SA 110 (GJ)**. To illustrate the point in this matter, the petition and condonation application were filed on 18 or 19 March 2021, more than a year after Rogers J's judgment and several months after his refusal of the leave to appeal application. While I am cognisant of the submission during the virtual hearing on 21 May that at that stage, there was as yet no feedback from the registrar of the SCA regarding the condonation application, the respondents' submission that the SCA petition suspends the Rogers J orders, considering the cases which I have referred to above, is questionable. For all intents and purposes, and until the SCA grants condonation, the January 2020 orders granted by Rogers J remain in effect.

20. The rest of this ground of appeal deals with the apparent and alleged unconstitutionality of the order which I granted at paragraph 6 (page 43 of the main judgment). The respondents are of the view that it violates their rights entrenched in

sections 1,9 and 34 of the Constitution, and the view is held that access to Courts and the right to appeal are denied. It is apparent that the DEA and its legal representatives certainly do not read nor understand paragraph 6 as doing so and submitted that such order was not only requested by them but warranted in the circumstances of the respondents' continued disobedience of the orders granted by the three Judges. It is apparent from his leave to appeal application and supporting affidavit, that Mr Xulu reads certain parts of paragraph 6 and ignores the rest of the paragraph which refers to *"any further applications"* (see page 43 of the main judgment). The paragraph/order certainly does not prevent nor preclude the respondents from exercising their right of appeal; it makes no inroads on any rights in respect of the condonation application and petition to the SCA in the Rogers J matters which were filed prior to the 4 May 2021 contempt judgment; and it most certainly does not infringe any rights in respect of the matters before Zilwa J – in this regard, paragraph 6 specifically states that *"This order (paragraph 6) does not apply to pending matters before Zilwa J"*. At the risk of stating the obvious, the word *"further"*, when used as an adjective, would refer to something additional to what already exists, in other words, additional applications.

21. Furthermore, in ***SS v VV-S [2018] ZACC 5****,* the Constitutional Court, in a leave to appeal application related to non-compliance of a maintenance order, referred at paragraph 31 of its judgment to ***Burchell v Burchell [2005] ZAECHC 33 ECD***. In this latter judgment, the High Court ordered that unless the party who was held in contempt purged his contempt, he ran the risk of being precluded from further litigation in that Court. In its unanimous judgment, the Constitutional Court considered whether such an order was contrary to section 34 of the Constitution and

the right of access to Courts. It found such an order to be *"wholly appropriate in circumstances when one is dealing with conduct that may be described as contemptuous of the authority of the order issued by a court"* (paragraph 31 of the judgment). At paragraph 21 of my judgment I refer, amongst others, to ***Burchell***, and at paragraphs 66 to 69 thereof, the conduct of the respondents in not complying with the various orders, is considered against the requirements of section 165 of the Constitution. Thus, the submission of that paragraph 6 is an unconstitutional order fails to consider the findings of the Constitutional Court in ***SS v VV-S.*** In addition, an earlier decision in ***Di Bona v Di Bona 1993 2 SA 682 (C)*** supports the view that a Court may refuse to hear a party until he/she has purged themselves of the contempt (at 688F-G).

22. ***I erred in finding Mr Xulu in contempt and in ordering him to surrender his personal vehicle (the Porsche) when the only liability determined by the Rogers J judgment was in respect of BXI***

The orders granted by Smith J and Binns-Ward J and the non-compliance in relation to the surrender of the Porsche are dealt with at length in the judgment, commencing at paragraph 49 thereof. The Porsche was attached pursuant to an initial order granted by Smith J against the respondents on 12 October 2021, directing the Sheriff to take possession thereof. Mr Xulu was the owner of the Porsche and cited as the fifth respondent in the matter before Smith J and similarly in the later orders related to the Porsche. The evidence in the contempt application showed repeated non-compliance of the orders related to the Porsche.

23. ***I erred in ordering Mr Xulu and BXI to pay a R30 000 fine when there exists no lawful basis for such a Draconian order***

Mr Xulu and BXI are quite entitled to their view that the R30 000 fine is Draconian. As a reminder though, Ms Bawa, on 25 February 2021, sought a fine of R3, 4 million, and when I pressed her further on the topic, she suggested a more modest fine in the sum of R244 000, which was the amount frozen in BXI's FNB account (pages 29-30 of the record; paragraph 32 of the main judgment). Ms Bawa correctly admitted later that she had over-reached, hence submitting a further note on fines on 19 March 2021 and leaving the amount in my discretion. I point out that there was no evidence presented in the contempt application that all Mr Xulu's accounts were frozen. Furthermore, I had regard to the seriousness of the orders requested and that is why I pertinently requested of Mr Masuku to address me on the fine and committal aspects if the application were to be successful – he had no submissions, and I again requested that he addressed me on it and takes instructions, and this exchange is evidenced at pages 44 and 45 of the record of proceedings on 19 March 2021. Mr Masuku eventually submitted that he could not make any submissions on figures (amounts) and a period of committal, but then suggested a R200 fine if I were to make a finding of contempt. A R30 000 fine, considered objectively and in light of the findings made in the judgment, was reasonable and has as its aim, to bring the contemnors (Mr Xulu and BXI) to their senses, and not to punish them (see ***S v Beyers 1968 (3) SA 70 (A)*** which I refer to at paragraph 20 of the judgment). Finally, the issue related to the late supplementary affidavit is addressed in preceding paragraphs.

24. ***I erred in sentencing Mr Xulu to 30 days' imprisonment when there exists no lawful basis for such sentence;***

My comments above refer and the findings of contempt are dealt with in detail in the judgment. Paragraph 2 of the order on page 42 of my judgment and the authorities mentioned and discussed in the judgment refer and need not be elaborated upon except to point out that paragraph 5 of the order is a sentence of 30 days' imprisonment wholly suspended for three years on very specific conditions related to any further contempt under this case number. The committal to 30 days' imprisonment is a criminal sanction which a Court may impose for contempt of court – the various authorities in the judgment refer.

25. The remaining grounds of appeal seem to be a repetition of grounds already mentioned above. The averment at paragraph 23 that Mr Xulu is left with the inescapable conclusion that I was "*determined at all costs"* to find him guilty of the crime of contempt to the extent of departing from settled law (the reference to the *"unconstitutional orders"*), is without merit. Mr Xulu and BXI, as well as his legal representatives, were treated with the utmost respect, and the respondents' were granted two postponements for legal representation. The matter was considered objectively and my knowledge of the history of the matter was obtained from the application which came before me on 25 February. Furthermore, Mr Xulu's lengthy complaint in his affidavit about his portrayal in the local media, with respect, has nothing to do with any grounds of appeal related to the contempt application. Lastly, the correspondence and emails referred to above have been placed in the Court file.

26. Having considered the grounds of appeal objectively, my finding is that the grounds advanced in the application do not have substance or merit and the respondents have not overcome the threshold of the test in section 17 (1)(a)(i) of the Superior Courts Act, in that there appears to me to be no reasonable prospect of success on appeal. Furthermore, I also find that there is no reason to grant leave on any of the other bases referred to in the remaining sub-paragraphs of section 17(1).

27. In the result, I grant the following order:

The application for leave to appeal is refused, with costs, to be paid jointly and severally by the first and fifth respondents.

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M PANGARKER
ACTING JUDGE OF THE HIGH COURT

For 2nd applicant: Ms N Bawa SC with Mr B Joseph SC and Ms J Williams
Instructed by: State Attorney, Cape Town
Mr L Manuel

For 1st and 5th respondents: Adv. Shai
Instructed by: Ndumiso Attorneys