IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 019721/2025
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED:
DATE 22/4/25
SIGNATURE

In the matter between:

ROAD ACCIDENT FUND Applicant/ Respondent

and

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE First Respondent/ Applicant

MINISTER OF FINANCE Second Respondent

REASONS FOR ORDER: APPLICATION FOR LEAVE TO APPEAL

TOLMAY J

1. The applicant (CSARS) brought an application for leave to appeal in terms of s 17(1)(a) of the Superior Courts Act, 10 of 2013. Several grounds were raised to support the application. I refused the application and said that I will provide reasons for the order. I am sensitive to the fact that these reasons must be provided without delay. The judgment speaks for itself, and I am not going to expand on what was said, nor am I going to address the criticism raised against it. I accept that some of the criticism may have merit. The Court had to

deliver a judgment expeditiously under very challenging circumstances and a set of unique facts. It was made abundantly clear that Court did not make any final or definitive decisions about the complex legal issues raised in this matter and that the order is operative for a very limited period.

2. The pertinent question in this matter is whether the order is appealable. This question needs to be answered by asking whether the Court's order has the attributes of an appealable decision .The requirements for such an order was set out in *Zweni v Minister of Law and Order*[1] and dealt with in a line of authorities after that decision.

3. In *TWK Agricultural Holdings*[2] with reference to the test set out in *Zweni,* the SCA said the following:

"Any deviation should be clearly defined and justified to provide ascertainable standards consistent with the rule of law. Recent decisions of this court that may have been tempted into the general orbit of the interests of justice should now be approached with the gravitational pull of Zweni".[3]

4. In *Knoop N.O. v National Director of Public Prosecutions*[4]*,* the SCA confirmed the *Zweni* decision and held:

"TWK Holdings reconfirms the test for appealability set out in Zweni v Minister of Law and Order (Zweni)*, namely that an appealable decision has three attributes.*

(a) *It is final in effect and not susceptible of alteration by the court of first instance;*

(b) *It is definitive of the rights of the parties; and*

(c) *It has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.*

TWK Holdings finds, despite other judgments to the contrary, that the interests of justice do not provide a self-

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[1] *Zweni v Minister of Law and Order* 1993 (1) (SA) 523 (A) at 534C-D (Zweni). See also *South African Druggists Ltd v Beecham Group Plc* 1987 (4) SA 876 (T) at 879E-880B.

[2] *TWK Agricultural Holdings (Pty) Ltd v Hoogveld Boerderybeleggings(Pty) Ltd and Others 2023(5)SA 163(SCA).*

[3] Id par.30.

[4] *[2023] ZASCA 141 (SCA); 2024 (1) SAC 121; [2024] 1 ALLSA 50.*

standing ground of appealability in this court outside the scope of Zweni. While the Zweni test is not immutable, TKW Holdings emphasises that any deviations from the Zweni test must 'be clearly defined and justified to provide ascertainable standards consistent with the rule of law'. This is necessary to prevent piecemeal appeals. The latter finding is consistent with what this court has previously stated: When a decision sought to be appealed against does not dispose of all the issues, it must, if permitted, lead to a just a reasonably prompt resolution of the real issue between the parties."[5] (Emphasis added)

5. This issue was also considered in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*[6] where the Constitutional Court considered the principles enunciated in *Zweni* and concluded as follows:

"[41] In deciding whether an order is appealable, not only the form of the order must be considered, but also, and predominantly, its effect. Thus, an order which appears in form to be purely interlocutory will be appealable if its effect is such that it is final and definitive of any issue or portion thereof in the main action. By the same token, an order which might appear, according to its form, to be finally definitive in the above sense may, nevertheless, be purely interlocutory in effect. Whether an order is purely interlocutory in effect depends on the relevant circumstances and factors of a particular case. In Zweni it was held that for an interdictory order or relief to be appealable it must: (a) be final in effect and not susceptible to alteration by the court of first instance; (b) be definitive of the rights of the parties, in other words, it must grant definite and distinct relief; and (c) have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[42] An interim order may be appealable, even if it does not possess all

[5] Id par.22.
[6] 2023 (1) SA 353 (CC) at paras 41 to 43.

three attributes, but has final effect or is such as to dispose of any issue or portion of the issue in the main action or suit, or if the order irreparably anticipates or precludes some of the relief which would or might be given at the hearing, or if the appeal would lead to a just and reasonably prompt resolution of the real issues between the parties. In Von Abo this court said:

> *'It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up,* ***including whether the relief granted was final in its effect, definitive of the right of the parties, disposed of a substantial portion of the relief claimed,*** *aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice.'*

[43] Whether an interim order has final effect or disposes of a substantial portion of the relief sought in a pending review is merely one consideration. Under the common-law principle as laid down in Zweni, if none of the requirements set out therein were met, it was the end of the matter. But now the test of appealability is the interests of justice, and no longer the common-law test as set out in Zweni."

6. The order granted by this Court is not final in its effect as it remains operative only until such time as the dispute that was declared between the RAF and SARS in terms of s 41 of the Inter-Governmental Relations Framework Act 13 of 2005 ("IRF Act") has been resolved, or the process has been terminated. Furthermore, the order is operative for a maximum of 45 days from the date of the judgment, or until the dispute in terms of the IRF Act has been resolved.

7. The order is not definitive of the rights of the parties, nor does it dispose of a substantial portion of the relief that will be claimed in the main action, if

the procedures under the IRF Act are not successful.

8. The effect of the interim interdict is not that it has final effect or dispose of any portion of the issues. The Court was not required to make a final determination about whether SARS is entitled to deduct/withhold the amount of R5.1 billion, which CSARS is obliged to pay to Eskom in terms of the settlement agreement between the parties, from the RAF levies. This issue will be decided in the main proceedings if instituted. If not, the interdict will lapse as set out in the order granted.

9. The interim relief granted only relates to the process to be followed in terms of the IRF Act, a process which the RAF is obliged to follow before instituting legal proceedings against SARS.

10. It was argued on behalf of CSARS that the interest of justice requires the Court to grant leave. There is no merit in this argument. As was held in *TWK Holdings* this is not a self-standing requirement, in any event there is no basis on which it can be argued that the interests of justice will best be served by granting leave to appeal, to the contrary, the very limited scope and lifetime of the order testify to the contrary.

11. CSARS was also aggrieved by the cost order and argued that it was final. Costs are ultimately within the discretion of the court, and it is trite that a court of appeal will not easily interfere in the exercise of such a discretion. This discretion was excersised within the context of the facts and the way in which the litigation was conducted by CSARS. This is set out in the judgment and clarify why the court excersised its discretion as it did. CSARS' inexplicable failure to reveal material facts, which they were entitled to and quite frankly obliged to reveal from the onset, led to the cost order granted against them.

12. The order was granted for the reasons set out above.

R TOLMAY

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant (Respondents in application for leave to appeal): Adv C Louw SC and Adv AJ Wessels instructed by Mpoyana Ledwaba Inc.

Counsel for First Respondents (Applicants in application leave to appeal): Adv J Peter SC and Adv B Ramela instructed by VDT Attorneys.

Date of Hearing: 17 April 2025.

Date for Reasons: 22 April 2025.