REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 7453/2024

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3) REVISED.

....

DATE 30 March 2026
SIGNATURE.....[redacted]...

In the matter between:

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE First Applicant

ALFRED MTHIMUNYE Second Applicant

and

ALLIANCE FUEL (PTY) LTD Respondent

JUDGMENT

GAISA AJ

INTRODUCTION

[1] This is an application for leave to appeal against the whole of the judgment and order I delivered on 25 July 2024 in urgent motion proceedings between Alliance Fuel (Pty) Ltd and the present applicants. In that judgment, the court granted urgent interim interdictory relief, including relief restraining further searches under the warrants in question and restraining the use of materials seized on 10 July 2024, pending the final determination of a reconsideration application to be brought in the Louis Trichardt Magistrates' Court.

[2] The present application for leave to appeal was noted against the whole judgment and order, and raises, inter alia, the issues of non-compliance with section 96 of the Customs and Excise Act 91 of 1964, section 24 of the Superior Courts Act 10 of 2013, the applicability of rule 55(3)(e) of the Magistrates' Courts Rules, alleged denial of *audi alteram partem*, the nature of the original order as interim or final in effect, and the costs order. The grounds are set out in the notice of application for leave to appeal.

[3] At the hearing of the application for leave to appeal on 23 March 2026, Mr. John Peter SC appeared for the applicants for leave to appeal, being the Commissioner and Mr. Mthimunye, and Mr. T Mathopo appeared for Alliance Fuel.

The matter proceeded virtually. This accords with the practice note filed for the leave application.

THE APPLICABLE TEST

[4] The governing test is section 17(1)(a) of the Superior Courts Act. Leave to appeal may be given only where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success, or where there is some other compelling reason why the appeal should be heard.

[5] It is trite that the threshold under section 17 is elevated. It is no longer enough that another court *might* come to a different conclusion. The question is whether there is a sound, rational basis to conclude that another court *would* have reasonable prospects of arriving at a different outcome, or whether compelling reasons otherwise justify appellate consideration.

[6] At this stage, the court does not finally determine the correctness of the original judgment. It determines whether the applicants have crossed the threshold for leave.

ISSUES ARISING

[7] The principal issues arising in this application are these:

(a) whether the order granted on 25 July 2024 is appealable, notwithstanding its interim form;

(b) whether the grounds based on section 96 of the Customs and Excise Act raise reasonable prospects of success;

(c) whether the applicants' complaints based on *audi alteram partem* and section 24 of the Superior Courts Act raise reasonable prospects of success;

(d) whether there are reasonable prospects that another court may differ on the applicability of rule 55(3)(e) and on the procedural route adopted by Alliance Fuel;

(e) whether another court may differ on the relief granted restraining further searches and the use of seized material; and

(f) whether the costs order is reasonably arguable on appeal.

APPEALABILITY AND INTERESTS OF JUSTICE

[8] Alliance Fuel contended that the order is purely interlocutory and therefore not appealable. Its heads and practice note place substantial reliance on the proposition that the order is strictly interim and preservative.

[9] The applicants, by contrast, submitted that although the order was couched in interim terms, it is final in effect in material respects, alternatively that the interests of justice warrant appellate intervention. They emphasized that the order restrains the use of seized material and further investigative conduct pending proceedings that remain unresolved, and that the wider controversy remains alive.

[10] In my view, the point of appealability is itself reasonably arguable. The original order was framed as pending the final determination of an application to be brought by Alliance Fuel in the Louis Trichardt Magistrates' Court for reconsideration of the warrants. Yet, the order also imposed operative restraints of immediate and continuing effect, including the prohibition on using, for any purpose whatsoever, material, information or data seized during the search conducted on 10 July 2024.

[11] Whether that order is non-appealable as a truly interim order, or appealable because of its practical final effect and the interests of justice, is not a point I can

confidently describe as settled against the applicants. That issue alone is, in my view, one on which another court could reasonably differ.

SECTION 96 OF THE CUSTOMS AND EXCISE ACT

[12] The applicants' central complaint is that the urgent application should not have been entertained at all because of non-compliance with section 96 of the Customs and Excise Act, and that the court failed to deal with that issue despite it having been raised. This is reflected both in the notice of application for leave to appeal and in the applicants' heads.

[13] It is so that the original judgment contains no express analysis of section 96 and no engagement with Dragon Freight. The absence of express treatment of a point now said to be jurisdictional is significant.

[14] I do not, at this stage, finally decide that the applicants are correct on section 96. There are countervailing considerations, including the urgent and rights-based character in which Alliance Fuel framed its application. Alliance Fuel's own position is that section 96 was not an absolute bar in the particular circumstances.

[15] Even so, I am satisfied that the section 96 issue raises at least a reasonable prospect that another court may conclude that the point ought to have been dealt with

expressly and may further conclude that the absence of compliance, if established, affected the court's jurisdiction to entertain the urgent application in the form in which it served before it. That issue is neither insubstantial nor peripheral.

AUDI ALTERAM PARTEM **AND SECTION 24**

[16] The applicants also contend that they were not afforded a reasonable opportunity to answer the urgent application, that the second applicant became aware of the matter only on 15 July 2024, and that the matter was set down for hearing on 16 July 2024. Those complaints are expressly recorded in the notice of application for leave to appeal.

[17] The applicants' heads also advance the argument that section 24 of the Superior Courts Act was implicated because service was outside the court's area of jurisdiction and that the court lacked power to abridge that statutory period merely by invoking urgency.

[18] Again, I need not finally determine those contentions here. It is enough that they are reasonably arguable. The interaction between urgent court procedure, the statutory time periods relied upon by the applicants, and the procedural fairness complaint is not so clear-cut that it can be dismissed as hopeless. Another court may regard the matter differently.

RULE 55(3)(E), THE NATURE OF THE WARRANT, AND THE RECONSIDERATION ROUTE

[19] A further substantial question is whether rule 55(3)(e) of the Magistrates' Courts Rules applied in the manner held in the original judgment. The original judgment held that the respondents were obliged to furnish the *ex parte* applications and that Alliance Fuel's right to receive them arose under rule 55(3)(e).

[20] The applicants contend, however, that the grant of the warrant was not part of ordinary civil litigation in the magistrates' court, that the magistrate acted under empowering legislation, and that the magistrate became *functus officio* once the warrant was issued. On that footing, they argue that Alliance Fuel had no procedural entitlement to pursue reconsideration in the magistrates' court under rule 55.

[21] That point, too, is reasonably arguable. The original judgment proceeded on the premise that rule 55(3)(e) gave rise to the right in question and that an application for reconsideration in the magistrates' court was the appropriate next procedural step. The applicants' challenge is directed at both premises. In my view, another court could reasonably differ on that question.

INTERDICT AGAINST FURTHER SEARCHES AND USE OF SEIZED MATERIAL

[22] The original judgment found that Alliance Fuel had established a right to the *ex parte* papers, a well-grounded apprehension of harm, and that the intended further operation on 15 July 2024 was *prima facie* unlawful because the warrants were expressly confined to 10 July 2024.

[23] The applicants challenge the factual basis for the finding concerning the intended further operation and also contend that the proper remedy, if any, lay later in proceedings where admissibility of evidence would be debated, not in an order prospectively barring use of the seized material. Those contentions are reflected in the notice of application for leave to appeal and elaborated in the heads.

[24] I remain mindful that the original judgment was concerned to protect constitutional and procedural rights in the face of *ex parte* coercive measures. But I am nonetheless persuaded that the questions whether such broad interim relief was competent, whether the correct forum and remedy were engaged, and whether the relief had a sufficient juridical foundation, are questions on which another court may reasonably differ.

COSTS

[25] The original judgment granted costs on the attorney and client scale against the respondents. The applicants challenge that order.

[26] Although appellate courts are ordinarily slow to interfere with costs orders, this is not an inflexible rule. Where the merits of the order itself are reasonably arguable, and where the impugned order included a punitive costs award in urgent proceedings, I consider the costs issue likewise to be reasonably arguable.

CONCLUSION

[27] Standing back, I am satisfied that this is not a case in which the application for leave to appeal can properly be dismissed as unmeritorious. Without finally deciding the appeal, I am of the view that the applicants have demonstrated reasonable prospects that another court may differ on one or more of the following: appealability; the proper effect of section 96; the *audi* complaint; the interaction between urgency and the statutory time provisions relied upon; the applicability of rule 55(3)(e); the correctness of the reconsideration route adopted; the competence and breadth of the interim interdict; and the costs order.

[28] I am also of the view that the matter raises issues of sufficient importance to warrant appellate consideration in the interests of justice.

[29] As to forum, I am not persuaded that this is an appropriate matter for direct leave to the Supreme Court of Appeal. The ordinary course should prevail. Leave ought accordingly to be granted to the Full Court of this Division.

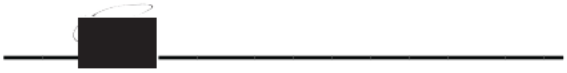
[30] As to costs of this application for leave to appeal, the appropriate order is that they be costs in the appeal.

ORDER

[31] In the result, the following order is made:

1. Leave to appeal is granted to the Full Court of the Limpopo Division, Polokwane, against the whole of the judgment and order delivered on 25 July 2024.

2. The costs of the application for leave to appeal shall be costs in the appeal.



GAISA AJ

Acting Judge of the High Court

Limpopo Division, Polokwane

APPEARANCES

For the Applicants for Leave to Appeal	:	**Adv J Peter SC**
For the Respondent	:	**Adv T Mathopo**

DATE OF HEARING	**:**	**23 March 2026**
DATE OF JUDGEMENT	**:**	**30 March 2026**

Delivered: This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 25 March 2026, at 10h00