


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 23278/2022

DOH: 25 MARCH 2026

1) REPORTABLE: NO 2) OF INTEREST TO OTHER JUDGES: NO 3) REVISED.	
	<u>29 APRIL 2026</u> DATE
SIGNATURE	

In the matter between:

POSEIDON OPERATIONS (Pty) LTD (Reg No.2016/299208/07)	Applicant
And	
THE COMMISSIONER FOR SOUTH AFRICAN REVENUE SERVICE	First Respondent

KWIKFREIGHT SERVICES (Pty) LTD (Reg No. 2009/01429/07)	Second Respondent
ZIEGLER SOUTH AFRICA (Pty) LTD (Reg No. 2005/017338/07)	Third Respondent
TRANSGLOBAL AFRICA LOGISTICS (Pty) LTD (Reg No. 2018/013690/07)	Fourth Respondent
INTERMODAL CONNECTIONS CC (Reg No. 1998/039594/23)	Fifth Respondent
RAINET LOGISTICS (Pty) LTD (Reg No. 2009/203750/23)	Sixth Respondent
BEYOND HEAVY HAULAGE (Pty) LTD (Reg No: 2014/0033763/07)	Seventh Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 29 April 2026.

ORDER

1. The application for leave to appeal is dismissed.

JUDGMENT

Bam J

Introduction

1. This is an application for leave to appeal the judgment and order of this court of 26 May 2025. The application is brought by the Commissioner for South African Revenue Service, CSARS or simply SARS. SARS' grounds of appeal are set out in their Notice of Application for Leave to Appeal. Before I consider SARS' grounds, I digress to consider a house keeping matter. Despite diligent search on Caselines, this court could not find Poseidon's Heads of Argument to resist the present application. The registrar of this court further confirmed that there was nothing emailed to her office prior to hearing the application. Accordingly, this judgment proceeds on the basis that Poseidon filed no papers to oppose the application.

Applicable legal principles

2. It is instructive to start off by considering the applicable legal principles. Section 17 of the Superior Courts Act governs applications for leave to appeal. Sub paragraph (1) (a) provides that leave to appeal may only be granted where:

' the judge or judges concerned are of the opinion that:

(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including

conflicting judgments on the matter under consideration;'

3. Our senior courts have interpreted this provision to mean that an applicant for leave to appeal must persuade the court on proper grounds that there is a reasonable prospect that another court would come to a different decision. 'A mere possibility of success, an arguable case or one that is not hopeless, is not enough'¹. If a court is unpersuaded that there would be prospects of success, it must still enquire into whether there is a compelling reason to grant leave, but here too, prospects of success play a vital role².

4. It is further a foundational procedural principle that an appeal lies against the substantive order rather than the reasons³. A court will not be persuaded if the applicant for leave merely directs criticisms against the reasoning in the judgment where the criticism does not have a material impact on the substantive order⁴.

5. Furthermore, it is now trite that a court of appeal will not likely interfere with a lower court's exercise of its discretion, unless it is persuaded that the discretion was not exercised judiciously, or that the court misdirected itself as to the facts or the law⁵.

¹ *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 17.

² *Ramakatsa and Others v African National Congress and Another* (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021), paragraph 10; *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020), paragraph 2.

³ *Zurich Insurance Company South Africa Ltd v Gauteng Provincial Government* (734/2021) [2022] ZASCA 127; [2023] 1 All SA 368 (SCA); 2023 (1) SA 447 (SCA) (28 September 2022), paragraph 4; *Neotel (Pty) Ltd v Telkom SOC & Others* (605/2016) [2017] ZASCA 47 (31 March 2017), paragraph 23.

⁴ *Celliers and Others v Kleinfontein Aandeleblok (Edms) Bpk and Others* (Leave to Appeal) (4755/2022) [2024] ZAGPPHC 1060 (31 October 2024), paragraph 15.

⁵ *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another* (CCT198/14) [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) (26 June 2015), paragraphs 83-87;

SARS' grounds of appeal

6. In dealing with SARS' grounds and, owing to repetition of some grounds, I do not necessarily deal with each and every ground. Rather, I deal with the grounds thematically.

1. *The court erred in finding that the applicant had demonstrated that the goods had been exported to Katanga*

7. SARS contends that the court erred in concluding that the applicant had demonstrated that it had exported the goods to Katanga. The judgment deals adequately with what the court considered in reaching this conclusion. I see no need to repeat the detailed reasoning set out in the judgment.

2. *The court erred in finding that SARS had to investigate whether the goods had been diverted*

8. Elsewhere in the Notice of Application for Leave to Appeal this ground is repeated as, *The court erred in finding that SARS had to conduct a proper and fair investigation.* As a start, it is necessary to record that it is incorrect that the court found that SARS had to investigate whether the goods had been diverted. That statement does not appear anywhere in the judgment. In any event, the context in which the word investigate is used in the judgment is made clear, and it bears no relation to the onus carried by the applicant to prove to the Commissioner that the goods had been exported to Katanga. I see no need to repeat what is in the judgment.

3. *The court erred in finding that the goods had been swapped and the founding affidavit does not contain any averment that the goods had been swapped.*

9. Both the founding and the answering affidavits make this averment very clearly. I see no point in repeating what is in the judgment.

4. *There was no explanation provided as to why inadmissible hearsay evidence was admitted and the court misapplied the law relating to hearsay evidence*

10. The judgment sets out a detailed account of how the court concluded that it was in the interests of justice to admit hearsay evidence. This criticism does not at all interact with that reasoning. I may add, and this point applies to the previous ground dealing with swapping of goods, it does not assist a litigant to snipe at the factual or even legal reasoning in the judgment, without demonstrating how the alleged error or errors materially impact the substantive order.

5. *The relevance of COVID 19 is not clear in the judgment*

11. The judgment makes the role of COVID 19 regulations abundantly clear. I see no need to repeat what is set out in the judgment.

6. *The court erred in granting condonation*

12. It is of interest to note that the court laid a foundation for its conclusions in this regard. Instead of interacting with the reasoning in the judgment, SARS merely states that the court erred. This cannot be a ground for appeal. I refer to the trite principles of

appellate interference with the exercise of a lower court's discretion. There is absolutely no case made as to why an appeal court should interfere with this court's exercise of its discretion. As the authorities make clear, an appellate court will not likely interfere with a lower court's exercise of its discretion. There is no merit to this ground.

7. The court erred in finding that annexures I, J, K, L1, and L2 constitute evidence that the goods were delivered

13. The judgment clearly sets out the court's reasoning prior to admitting this evidence into record. I stand by what is set out in the judgment.

8. The court erred in admitting the evidence of Ntumba Euxodie

14. The judgment provides adequate reasons for admitting Ntumba's evidence into record. There is no point in repeating what is set out in the judgment.

9. The court erred in finding that there are no material disputes of fact

15. SARS contends, without more, that the court erred in finding that there were no material disputes of fact. A statement is then made that the material disputes of fact are demonstrated in the applicant's own affidavit. Indeed, the judgment made that finding. I stand by that finding. Consistent with SARS' conduct in their answering affidavit, the claim is simply made that there are material disputes of fact without any effort to demonstrate what those material disputes of fact are, and where SARS dealt

with those disputes in their answering affidavit.

Conclusion

1. Based on the reasons set out in this judgment, I find that the grounds raised by SARS lack merit and that another court would not come to a different finding on the issues raised in the judgment. The application for leave to appeal must accordingly fail.

Order

1. The application for leave to appeal is dismissed.



N.N BAM
JUDGE OF THE HIGH COURT, GAUTENG
DIVISION, PRETORIA

Date of Hearing: 25 March 2026

Date of Judgment: 28 April 2026

Appearances:

Counsel for the Respondent: Adv C Naude SC

Instructed by: MacRobert Attorneys

Brooklyn, Pretoria