

**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> HOLLARD INSURANCE COMPANY OF NAMIBIA & 11 OTHERS vs MINISTER OF FINANCE & ANOTHER	<b>Case No:</b> HC-MD-CIV-MOT-REV-2018/00127
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE GEIER	<b>Date reserved:</b> 09 JUNE 2020
	<b>Delivered on:</b> 24 JUNE 2020
<b>Neutral citation:</b> <i>Hollard Insurance Company of Namibia v Minister of Finance</i> (HC-MD-CIV-MOT-REV-2018/00127) [2020] NAHCMD 247 (24 June 2020)	
<b>IT IS ORDERED THAT:</b>  1. Prayers 4.10 and 4.11 of the Notice of Application for leave to Appeal, dated 11 February 2020 are granted.  2. The case is postponed to 18 November 2020 at 08h30 for a Status Hearing.	
<b>Following below are the reasons for the above order:</b>	
<u>Introductory facts</u>  1. On 24 February 2020, the first respondent (‘the Minister of Finance’) filed an application for leave to appeal to the Supreme Court against the whole of the judgment and order of this Court (delivered on 21 January 2020), save for those portions of the judgment and order refusing to grant the orders sought by the applicants.  2. The complained of judgment and orders where an interlocutory judgment and the resultant interlocutory orders, made in the course of a pending review application, emanated essentially from a request for additional documents/materials alleged to	

have been in the possession of- or which were available to the decision- maker, the said Minister, at the material time, and which were relevant, to the decisions sought to be reviewed.

The procedural issue – application for leave to appeal brought on ‘notice of application’ and not on ‘notice of motion’ supported by affidavit

3. During the subsequent case management process a procedural issue arose. The application for leave to appeal had been delivered in the ‘usual form’ on ‘notice of application’ and not on ‘notice of motion’ supported by an affidavit.
4. Counsel for both parties then duly alerted the Court to a recent decision – the judgment delivered by the Labour Court - in *Namibia Water Corporation Ltd v Tjipangandjara* (LCA 16 & 17/2017) [2019] NALCMD 33 (21 November 2019). In that case it was held that an application for leave to appeal should be brought on notice of motion and be supported by an affidavit.<sup>1</sup>
5. The court thus requested the parties to consider the impact of that decision, if any, on the currently pending application.
6. The parties in this matter then were agreed that this Court should not follow the approach adopted by the Labour Court in *Namibia Water Corporation*.
7. It was submitted that the judgment was clearly wrong, that it was not consistent with Rule 115, which regulates leave to appeal and were, plainly, no evidence is required on affidavit for purposes of securing leave to appeal. The evidence on which such an application may permissibly rely is already before court. Indeed, so it was submitted further, this was directly contrary to the logic of appeals and for the determination of the relevant issues against which leave should be granted or refused and that such issues were to be argued and determined on matters extraneous to the record to which an appeal court, (in principle), is confined. Here it was further relevant that leave to appeal may be sought immediately after judgment (without the need to file any process)<sup>2</sup> and thus that all these aspects clearly demonstrate that the *Namibia Water Corporation* judgment was wrong. In any event

---

<sup>1</sup> See *Namibia Water Corporation Ltd v Tjipangandjara* at [15].

<sup>2</sup> See Rule 115(1).

such judgment did neither accord with the practice in this Court, nor was it consistent, with its authorities, that an application for leave to appeal should be sought on 'notice of application'.

8. I agree with these joint submissions and the reasons advanced therein. They ultimately also accord with the practice which has been followed in this jurisdiction for many years. In this regard it is also clear that not all applications have to be brought 'on notice of motion' supported by an affidavit and that an application can also be brought 'on notice', in an appropriate case, for as long as it is accompanied by the grounds,<sup>3</sup> on which such application is based.<sup>4</sup> I will thus regard myself not bound by the *Namibia Water Corporation* decision and I will accordingly not follow it.
9. However, *ex abundante cautela*, the Minister did nevertheless file an application seeking: (a) insofar as necessary, condonation for the late filing of a notice of motion and supporting affidavit as per *Namibia Water Corporation*; and (b) leave to file the supporting affidavit incorporating by reference the notice of application for leave to appeal filed on 11 February 2020. The application was unopposed. It follows that it should be granted in the circumstances, in so far as this may have been necessary.

#### The consideration of the merits of the application for leave to appeal

10. When it so comes to the determination of the merits of the application for leave to appeal, it must firstly be said that both parties filed thorough- and impressive heads of argument. I am grateful to counsel for their effort and industry.
11. The main issue around which this part of the dispute centered was, whether or not, the orders, made by this Court, on 21 January 2020, were appealable at all and thus whether or not the threshold requirements for leave to appeal had been met.
12. In the second instance the parties advanced detailed submissions – for and against – each ruling - the Court had made on each of the requests for additional discovery

---

<sup>3</sup> As required in this instance by Rule 115(2).

<sup>4</sup> Compare in this regard for instance Rules 61(1) and (2) See also: *Veldman and Another v Bester* 2011 (2) NR 581 (HC) at [18] to [25] (under the old rules) and *Namibia Competition Commission v Namib Mills (Pty) Ltd* (HC-MD-CIV-MOT-GEN-2017/00061) [2019] 465 (7 November 2019) (under the new rules).

made on behalf the applicants in the main case.

13. Upon a thorough review of the submissions and arguments made in this regard I must say that I would, in the normal course, have been persuaded by the submissions and arguments advanced on behalf of the respondents in this application for leave to appeal and consequentially would have been inclined to refuse the sought leave to appeal. Not only did the detailed submissions in defence of the respective rulings made by the Court show that there would have been no reasonable prospect that another court may come to a different conclusion in relation to one or more of this Court's findings<sup>5</sup> which underpinned its orders of 21 January 2020, but also the submissions relating to the non-appealability of the orders would have found favour with myself.
14. The referred to orders must surely be classified as simple 'interlocutory rulings'. They were procedural rulings – or directives - relating to additional 'discovery'. They did not decide anything about the substance of the main dispute between the parties in this review. Orders of this kind are generally not appealable.

The consideration of the possible impact of the interests of justice on the application

15. Be that as it may. In the introduction to the main heads of argument filed in support of the Minister's quest for leave to appeal it was pointed out that :

' ... Furthermore, the interests of justice dictate that an appeal lies to the Supreme Court. The judgment has far-reaching implications for the scope and application of Rule 76 in future judicial reviews... '.
16. This aspect, in my view, is an important consideration, which requires determination. It is an aspect that clearly cannot be ignored, although counsel for the respondents resisted this notion and argued otherwise.
17. They did so as follows :

---

<sup>5</sup> Save possibly for those relating to the Court order under paragraph 4 which relate to the preceding interpretation of the concept 'possession' as used in Rule 76(6) and the resultant qualified order for the production of materials possibly not in the possession of the Minister.

‘16. The applicants do not agree that this is a principle in the determination of the first leg – the threshold enquiry – in an application for leave to appeal in Namibia, which is whether the orders are appealable at all. The interests of justice may be relevant in the second leg of the enquiry, when a court must determine whether leave to appeal should be granted against orders that are appealable. This alleged principle is holus bolus an importation of the South African principles and its legislation. It may have been a bona fide mistake, but it is wrong.

17. The Namibian authorities<sup>6</sup> on which the first respondent relies do not establish or support the proposition that the interests of justice are relevant to the threshold enquiry. In paragraph 5 of Von Weidts, the court merely referenced the cited and then – recent SCA judgment in considering the propriety of a litigant presenting a constitutional argument on appeal for the first time, without having raised it in the court of first instance. And in Lameck, paragraphs 10 and 11 dealt with the interest of justice on the second leg of the enquiry. But, as we have already submitted, this mistake may have crept in because of the erroneous assumption that South African legislation is applicable here.’

18. In spite of this stance they also advance the following additional factors for consideration :

‘38. Moreover, one of the primary policy reasons for the reluctance to allow appeals on interlocutory matters which do not have a definite effect on the rights between the parties, is the importance attached to avoiding piecemeal litigation.<sup>7</sup> In the present case, the interests

---

<sup>6</sup> Von Weidts v Minister of Lands and Resettlement and Another 2016 (2) NR 500 (HC) at par 5 with reference to Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others 2016 (3) SA 317 (SCA) at par 24; Lameck v State (CC 15/2015) [2014] NAHCMD 85 (10 April 2015) at par 10 and 11.

<sup>7</sup> Hollard at par 9 (quoting par 20 of Shetu):

“There are important reasons for preventing appeals on rulings. In *Knouws NO v Josea and Another*, this court cited with approval the following remarks of the South African Supreme Court of Appeal in *Guardian National Insurance Co Ltd v Searle NO*,

*‘There are still sound grounds for a basic approach which avoids the piecemeal appellate disposal of the issues in litigation. It is unnecessarily expensive and generally it is desirable for obvious reasons, that such issues be resolved by the same court and at one and the same time.’* As the court in *Guardian National Insurance* went on to note, one of the risks of permitting appeals on orders that are not final in effect, is that it could result in two appeals on the same issue which would be ‘squarely in conflict’ with the need to avoid piecemeal appeals.”

And at par 28:

This approach would at the same time - and to borrow a phrase - also ‘*prevent the parties from yo-yoing up and down the courts*’ and which approach would also prevent, at the same time, the piecemeal- appellate adjudication of issues in the litigation, pending before the lower court, which would also achieve a cost- and time saving effect, which course would also avoid the

of justice require that this matter not be adjudicated on a piecemeal basis. The pleadings in this case, and what is common knowledge about the extent of litigation between the parties on the issues to be decided in this review, make plain that this is not a case where the court should await a decision by the Supreme Court on a matter that is neither definitive of the rights of the parties nor disposes of at least a substantial portion of the relief claimed in the main proceedings. Reviews must be *instituted* without undue delay, for reasons well known. For the same reasons review applications should be *finalised* without delay.

39. The first respondent's concern that other courts will be bound by this court's decision is a strange concern. Since when, we respectfully ask, is the *stare decisis* principle a factor to be taken into consideration in an application for leave to appeal. Of course, other courts must follow the ratio of this case where applicable on the facts. And it is a good thing at that. Furthermore, the interests of justice cannot only focus on "other" potential litigants, or on the general public, but must also consider and balance the interests of the parties to the present case and the significance of the issues at stake in the main application. In the present case, the orders which the court granted on 21 January 2020 merely regulate the conduct of litigation and do not dispose of any of the issues in the review, launched in April 2018. All of the issues in the review are yet to be determined.

40. In addition, the court did not reinterpret Rule 76(6) or Rule 53. The court in effect simply applied the principles established long ago in the celebrated case of Johannesburg City Council and confirmed in Namibia in Aonin Fishing already in 1998. When the first respondent's complaints are closely examined, it is clear that his complaints are directed to the High Court's application of those principles, and to the High Court's application of its common sense. While it is indeed so that the court also relied on the Helen Suzman Foundation case, it did so primarily to support its application of the principles gleaned from Johannesburg City Council and Aonin Fishing, and its common sense. The court's reliance for guidance on Helen Suzman Foundation does not make it in interests of justice for the review (which is not relevant to the threshold enquiry anyway) to be postponed to 2022, which would be the inevitable result if the matter is to proceed to the Supreme Court. In any event, the first respondent cannot seriously suggest - and he also does not do so - that the Namibian Supreme Court will find that Helen Suzman Foundation was wrongly and should not be followed in Namibia.

...

63. In the premises the conclusions in paragraph 40 are incorrect. There is no need, in the interest of justice or in the public interest, for the current litigation between the parties to be stopped mid-stream to await the determination of an appeal, and only resume in 2022.'

19. On the other hand it was argued on behalf of the Minister that one of the principles relevant to the determination of whether the Court's judgment of 21 January 2020 was appealable was that :

‘ ... it is clearly in the interests of justice that leave to appeal is granted. The proper construction of Rule 76(6) is not only of importance to the parties but of significant public importance given its application to all future judicial reviews.<sup>8</sup> In this regard, this Court's findings *inter alia* as to the application of the South African Constitutional Court's judgment in *Helen Suzman Foundation*<sup>9</sup>, and its findings as to the scope of Rule 76(6), are matters which merit the attention of the Supreme Court.’

20. It was submitted further that :

‘ ... Moreover, the matter raises important questions about the proper construction of Rule 76 and the obligations on decision-makers (and the rights of litigants) in all future judicial reviews. Rule 76 lies at the heart of the very important remedy of judicial review: it is clearly in the public interest for the validity of the new ground broken by the Court's judgment in this matter to be pronounced upon by the highest Court.’

21. The replying submissions were less assertive and now to the effect that :

‘ ... Although interests of justice is generally an important consideration to determine whether leave to appeal must be granted, we respectfully submit that there is nothing which precludes this Court from considering interests of justice in determining whether an order is appealable or not. In any event, such an approach is consistent with comparative jurisdiction.<sup>10</sup> We accordingly invite the Court to take it into account.’

22. When it comes to the consideration of this further aspect it must firstly be said that I did not find the Namibian authorities relied upon<sup>11</sup> by the applicant for leave to appeal very helpful. In a footnote however reference was made to *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) (2016 (9) BCLR 1133; [2016] ZACC 19) where Mogoeng CJ, writing for the full bench of the South African Constitutional Court, had

<sup>8</sup> *Lameck supra* para 10.

<sup>9</sup> *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC).

<sup>10</sup> *City of Tshwane Metropolitan Municipality v Afriforum* 2016 (6) SA 279 (CC) at para 40 et seq. *Lameck v State* (CC 15/2015) [2014] NAHCMD 85 (10 April 2015) para 10 and 11.

<sup>11</sup> *Lameck v State* (CC 15/2015) [2014] NAHCMD 85 (10 April 2015) at [10] – [11], *Von Weidts v Minister of Lands and Resettlement and Another* 2016 (2) NR 500 (HC) at [5].

this to say:

'[39] The appealability of interim orders in terms of the common law depends on whether they are final in effect.<sup>12</sup> ...

[40] The common-law test for appealability has since been denuded of its somewhat inflexible nature. Unsurprisingly so because the common law is not on par with but subservient to the supreme law that prescribes the interests of justice as the only requirement to be met for the grant of leave to appeal. Unlike before<sup>13</sup> appealability no longer depends largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the relief claimed in the main application. All this is now subsumed under the constitutional interests of justice standard. The overarching role of interests of justice considerations has relativised the final effect of the order or the disposition of the substantial portion of what is pending before the review court, in determining appealability.<sup>14</sup> The principle was set out in OUTA by Moseneke DCJ in these terms:

'This court has granted leave to appeal in relation to interim orders before. It has made it

---

<sup>12</sup> OUTA above n3 para 24. (*National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) (2012 (11) BCLR 1148; [2012] ZACC 18) (OUTA) ) See also *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) ([1992] ZASCA 197) (Zweni) at 532J – 533A, where the court stated that:

'(F)irst, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.'

<sup>13</sup> See Zweni above n9 at 532J – 533A.

<sup>14</sup> *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC) (2014 (6) BCLR 726; [2014] ZACC 8) (Informal Traders) para 17 states:

'This provision [s 167(6) of the Constitution] makes it plain that the court has a wide appellate jurisdiction on constitutional matters. It may decide whether to hear an appeal from any court on any constitutional dispute provided it serves the interests of justice to do so. There is no pre-ordained divide between appealable and non-appealable issues. Provided a dispute relates to a constitutional matter, there is no general rule that prevents this court from hearing an appeal against an interlocutory decision such as the refusal of an interim interdict. However, it would be appealable only if the interests of justice so demand. Thus, this court would not without more agree to hear an appeal that impugns an interlocutory decision, especially because such a decision is open to reconsideration by the court that has granted it. Doing so would be an exception rather than the norm.'



clear that the operative standard is the interests of justice. To that end, it must have regard to and weigh carefully all germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relevant and important consideration. Yet, it is not the only or always decisive consideration. It is just as important to assess whether the temporary restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable.<sup>15</sup> .....

[41] What the role of interests of justice is in this kind of application, again entails the need to ensure that form never trumps any approach that would advance the interests of justice. If appealability or the grant of leave to appeal would best serve the interests of justice, then the appeal should be proceeded with no matter what the pre-Constitution common-law impediments might suggest. This is especially so where, as in this case, the interim order should not have been granted in the first place by reason of a failure to meet the requirements. The Constitution and our law are all about real justice, not mere formalities. Importantly, the constitutional prescripts of legality and the rule of law demand that nobody, not even a court of law, exercises powers they do not have. Where separation of powers is implicated and forbids the grant of the order sought to be appealed against, the interests of justice demand that even an order that is not of final effect or does not dispose of a substantial portion of the issues in the main application, nevertheless be appealable.

[42] Consequently, although the final effect of the interim order or the disposition of a substantial portion of issues in the main application is not irrelevant to the determination of appealability and the grant of leave, they are in terms of our constitutional jurisprudence hardly ever determinative of appealability or leave.<sup>16</sup> ...'.

23. Whist recognising the context in which all this was said by the Constitutional Court and being mindful of the arguments that the relied upon Namibian authorities do not

---

<sup>15</sup> OUTA above n3 para 25.

<sup>16</sup> Id para 25.

- a) Why should appealability in a constitutional era still depend largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the relief claimed in the main application? I see no reason why this should be so exclusively, when the applicable tests allow for some flexibility already; ie. In respect of which it was said for example in *Moch*<sup>17</sup> that the *Zweni* principles were not intended to be exhaustive or 'cast in stone', which principles have already been adopted in this jurisdiction;<sup>18</sup>
- b) Can it not be said generally that the prevailing constitutional interests in this country do not exclude the interests of justice standard;<sup>19</sup>
- c) Why should the overarching role of the interests of justice considerations not play a role in determining appealability in Namibia as well? I believe they should - after all our Courts do not turn a blind eye to such considerations;<sup>20</sup>
- d) Can it not also be said generally that the role of the interests of justice principle in this kind of application, also entails the need to ensure that form never trumps any approach that would advance the interests of justice<sup>21</sup>; and
- e) Can it not be said in such premises that if appealability or the grant of leave to appeal would best serve the interests of justice, then the appeal should be proceeded with, no matter what the other legal impediments might suggest.

24. Given the above considerations I believe that it can firstly be said that I am able to uphold, on that basis, the submission that there is nothing to preclude this Court to also consider the interests of justice in determining whether it should grant leave to appeal in this case or not.

25. Secondly, each case should however be determined in the light of its own facts. This would also be stating the obvious.

<sup>17</sup> *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A) at 10F.

<sup>18</sup> See for example : *Shetu Trading CC v Chair, Tender Board of Namibia and Others* 2012 (1) NR 162 (SC at [22].

<sup>19</sup> : See for example : *Prosecutor-General v Paulo and Another* 2017 (1) NR 178 (HC) at [21] or *Standard Bank of Namibia Ltd v Atlantic Meat Market* 2014 (4) NR 1158 (SC) at [30].

<sup>20</sup> Compare for example : *Prosecutor-General v Paulo and Another* 2017 (1) NR 178 (HC) at [21] or *Standard Bank of Namibia Ltd v Atlantic Meat Market* 2014 (4) NR 1158 (SC) at [30].

<sup>21</sup> See for instance : *Prosecutor-General v Paulo and Another* 2017 (1) NR 178 (HC) at [21].

26. Thirdly, the number of factors that can be considered in this regard should, surely, not be limited.
27. The fact that an 'interim' appeal will traverse matters of significant importance is such a factor. Others, for example, would be the reluctance of the Courts to allow appeals in interlocutory matters in order to avoid piecemeal litigation or where the appeal would not at least dispose of a substantial portion of the relief claimed and where considerations of delay also causing additional costs would also come into play.
28. The respondents in this application have relied on the latter factors. It was also not without irony that it was argued on their behalf that the Minister's concern that other Courts would be bound by this Court's decision was 'a strange concern' and that the *stare decisis* principle should not be a relevant factor to be taken into account.
29. The significance of this Court's judgement of 21 January 2020 was also downplayed, in respect of which it was for instance argued that '*the Court did not re-interpret Rule 76(6) or Rule 53*'.
30. In spite of these weighty considerations and valid submissions to the contrary I align myself with the submissions made on behalf of the Minister that '*... the proper construction of Rule 76(6) is not only of importance to the parties but of significant public importance given its application to all future judicial reviews. In this regard, this Court's findings inter alia as to the application of the South African Constitutional Court's judgment in Helen Suzman Foundation<sup>22</sup>, and its findings as to the scope of Rule 76(6), are matters which merit the attention of the Supreme Court...*'.
31. These submissions are indeed borne out by the judgment in question in which the Court not only endeavoured to tabulate the generally applicable legal principles pertaining to additional 'discovery' in reviews'<sup>23</sup>, but also the relevant overarching constitutional principles<sup>24</sup> and also certain specifically applicable principles<sup>25</sup>. The court then interpreted the concepts of 'possession' as utilised in Rule 76(6)<sup>26</sup> and

<sup>22</sup> *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC).

<sup>23</sup> See paragraph [11] of the Judgment of 21 January 2020.

<sup>24</sup> See paragraph [12] of the Judgment of 21 January 2020.

<sup>25</sup> See paragraph [13] of the Judgment of 21 January 2020.

that of 'relevance'. The fundamental differences pertaining to 'discovery' in motion proceedings, in general, and those underpinning reviews where considered and dealt with, with reference also to the Helen Suzman Foundation decision <sup>27</sup> and from which the Court ultimately distilled the, from now on, and for the time being, governing principles and which it then did in the following manner :

[20] Accordingly what must be disclosed is all information relevant to the impugned decision as otherwise the provisions of Rule 76 would be rendered meaningless. The Rule in any event requires this in express terms. The rule also clearly envisages the grounds of review changing later. 'Relevance' should thus be assessed as it relates to the decision sought to be reviewed, not with reference to the case pleaded originally in the founding affidavit. In this regard it can thus be said that, what must be disclosed - and it is here that I would think that the material change comes in - are all those '*... documents/materials that could have any tendency, in reason, to establish any possible/potential review ground in relation to the decision to be reviewed, ie. all materials relevant to the exercise of the public power in question ...*'. It follows - and I thus uphold the submission - that the word 'relevance' as used in Rule 76(6) is 'wide(r) in its scope and meaning' in these respects. The concept thus differs in its scope and the way and from how it is applied in action- and also in motion proceedings in general. It is thus also not limited only to the actual material serving before the decision-maker but it so also includes all material available to the decision-maker – whether considered or not – for as long as it is relevant to the decision to be reviewed - and in any event it includes the material that is incorporated by reference. In this regard it was thus correctly submitted that '*an applicant in a review will be entitled to documents that are relevant to the case pleaded in the founding affidavit, and/or(my insertion) to any other information that relates to the decision sought to be reviewed even if the relevance does not specifically appear from the pleadings*'. '

32. Given the further fact the Court's judgment is of importance to the parties and that '*... Rule 76 indeed lies at the heart of the very important remedy of judicial review ...*' and given the fact that the judgment of 21 January 2020 was further of significant public importance given its application to future reviews as it clearly '*broke new ground*', at least in Namibia, in this regard, and in circumstances where applications for review are frequent, in the course of which applications in terms of Rule 76(6) often require the *in limine* determination of the Courts, in which then these '*groundbreaking*' principles thus find frequent application, I believe that it is indeed in the interests of justice that leave to appeal be granted in this particular

<sup>26</sup> See paragraphs [14] to [16] and [17] to of the Judgment of 21 January 2020.

<sup>27</sup> See paragraph [11] of the Judgment of 21 January 2020.

instance, as the subject matter of the appeal, that I will allow, does indeed, in my respectful opinion, warrant the attention of the Supreme Court.

33. In the result :

- a) Prayers 4.10 and 4.11 of the Notice of Application for leave to Appeal, dated 11 February 2020 are granted.
- b) The case is postponed to 18 November 2020 at 08h30 for a Status Hearing.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondents
JJ Gauntlett SC QC LC Kelly E Nekwaya  <i>Instructed by</i> Sisa Namandje & Co. Inc.	R Heathcote SC R Maasdorp  <i>Instructed by</i> Francois Erasmus & Partners