THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 20 November 2026

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Ganie v Ganie (1107/2024) [2026] ZASCA 157 (20 November 2026)

Today, the Supreme Court of Appeal (SCA), struck from the roll, an application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the SC Act) of an order by two judges of this Court refusing the applicant's application for leave to appeal against the order of the KwaZulu-Natal Division of the High Court, Durban (the high court).

The applicant, Dr Irshad Faizal Siddi Ganie (Dr Ganie), a South African, and the respondent, Ms Sadia Siddi Ganie (Ms Ganie), a Pakistani national, were married on 23 April 2018, out of community of property with the exclusion of the accrual system. One minor child was born of the marriage on 27 December 2018. The marriage was short-lived and the parties ceased cohabiting on 27 December 2019, when Ms Ganie obtained an ex-parte interim protection order against Dr Ganie. She removed the minor child from the matrimonial home until such time as 'a parental plan was approved by a competent court'.

On 17 October 2023 the high court granted a decree of divorce. The court ordered that the parties remain co-holders of parental responsibilities and rights in respect of the minor child, ordered the parties to share the primary residence of their minor child with shared unsupervised care and contact. Dr Ganie was ordered to pay maintenance to Ms Ganie in an amount of R27 500 per month and for the minor child at the rate of R13 000 per month, including all reasonable educational, medical and dental care expenses. Dr Ganie was also ordered to pay the costs of suit on an attorney and client scale, including inter alia, Ms Ganie's expert witnesses' costs.

The high court dismissed the applicant's application for leave to appeal. On 29 August 2024, two judges of this Court dismissed the applicant's leave to appeal in terms of s 17(2)*(b)* of the SC Act. Subsequently, on 9 December 2024, the President of this Court referred the decision refusing leave to appeal for reconsideration, and if necessary, variation, in terms of s 17(2)*(f)* of the SC Act.

The issues for determination at this Court were (a) the primary residence, care and contact of the minor child; (b) spousal maintenance to Ms Ganie; (c) the punitive costs order against Dr Ganie; and (d) the expert witnesses' costs. The threshold that governs all these issues is whether a grave failure of justice would result or the administration of justice may be brought into disrepute for purposes of s 17(2)*(f)* of the SC Act.

The SCA confirmed that the threshold to be met in terms of s 17(2)*(f)* is whether a 'grave failure of justice would otherwise result' or 'the administration of justice may be brought into disrepute'.

The SCA held that reconsideration is an exceptional and narrow procedure aimed at preventing grave injustice rather than re-litigating settled issues. The power under s 17(2)*(f)* is not intended to afford a disappointed litigant further bites 'at the proverbial appeal cherry' or a further opportunity to procure relief that has already been refused. The existence of 'exceptional circumstances', is a jurisdictional fact that must be satisfied before reconsideration of the order refusing leave can be entertained.

In determination of the issues, the SCA found that the high court's order for shared primary residence and care is supported by evidence and is in the best interest of the minor child and there is no basis to disturb that finding.

The safeguards imposed by the high court on the perceived risk of abduction are sufficient. Since the flight risk argument cannot succeed, the application falls to be dismissed.

The lifelong spousal maintenance challenge lacks merit as there is no misdirection by the high court in the exercise of its discretion. The high court ordered that spousal maintenance should be paid until Ms Ganie obtains a work visa and secures work employment. The order does not operate indefinitely. The question of the punitive cost order is in the discretion of the trial court, and this Court will not interfere with the exercise of such discretion, save where the discretion was not exercised judicially or the decision was influenced by wrong principles. No such case was made out.

The SCA held that the applicant has not established that the refusal of leave to appeal would result in grave injustice or disrepute to the administration of justice and Dr Ganie has failed to show exceptional circumstances. Furthermore, the arguments raised in this Court are the issues raised by Dr Ganie which have already been considered by two Justices in this Court, and they found no reasonable prospects or compelling reasons to grant leave to appeal.

The SCA further held that the application for reconsideration is devoted to the repetition of the same arguments already raised and rejected in the trial. The jurisdictional prerequisite for reconsideration is absent. The application does not raise any unusual, novel or exceptional circumstances to justify the extraordinary intervention contemplated in s 17(2*)(f)* of the SC Act. It therefore follows that the reconsideration application must fail.

The SCA further expressed its displeasure and lamented the manner in which the record was prepared and thus made an appropriate punitive cost order.

The SCA accordingly held that the application for reconsideration of the decision refusing leave to appeal is struck from the roll. The applicant is ordered to pay the respondent's cost incurred in opposing the application for reconsideration on an attorney and client scale.

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