THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case no: 1308/2023

In the matter between:

LEBASHE INVESTMENT GROUP (PTY) LIMITED	**FIRST APPELLANT**
HARITH GENERAL PARTNERS (PTY) LIMITED	**SECOND APPELLANT**
HARITH FUND MANAGERS (PTY) LIMITED	**THIRD APPELLANT**
WHEATLEY, WARREN GREGORY	**FOURTH APPELLANT**
MAHLOELE, TSHEPO DUAN	**FIFTH APPELLANT**
MOLEKETI, PHILLIP JABULANI	**SIXTH APPELLANT**

and

UNITED DEMOCRATIC MOVEMENT	**FIRST RESPONDENT**
HOLOMISA, BANTUBONKE HARRINGTON	**SECOND RESPONDENT**

Neutral Citation: *Lebashe Investment Group (Pty) Ltd and Others v United Democratic Movement and Another* (1308/2023) [2025] ZASCA 29 (28 March 2025)

Coram: SCHIPPERS, HUGHES and BAARTMAN JJA and WINDELL and NORMAN AJJA

Heard: 25 FEBRUARY 2025

Delivered: 28 MARCH 2025

Summary: Practice — pleadings — exception on ground that amended plea does not disclose a defence — appealability of dismissal of exception — interests of justice not supporting appealability.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Bokako AJ)

The appeal is struck from the roll with costs, such costs to include the costs of the application for leave to appeal, all of which will include those consequent on the employment of two counsel.

JUDGMENT

Windell AJA (Schippers, Hughes and Baartman JJA and Norman AJA concurring):

Introduction

[1] This is an appeal against the dismissal of an exception raised by the appellants in response to the respondents' amended plea. The appeal is with leave of the Gauteng Division of the High Court, Pretoria (per Bokako AJ).

[2] As with many interlocutory orders brought before this Court on appeal, the question about appealability is squarely raised. Although the order of the court a quo is interlocutory in nature, and despite the reservations expressed in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others*[1] *(TWK)* regarding the appealability of an order dismissing an exception, it is now settled that the requirements in *Zweni v Minister of Law and Order,*[2] namely whether the relief granted is final in its effect, definitive of the rights of the parties, and disposes of a substantial portion

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[1] *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* 2023 (5) SA 163 (SCA) [2023] ZASCA 63 (*TWK*); See also *Maize Board v Tiger Oats Ltd and Others* [2002] 3 All SA 593 (A); 2002 (5) SA 365 (SCA) *(Maize Board)*.

[2] *Zweni v Minister of Law and Order* [1993] 1 All SA 365 (A); 1993 (1) SA 523 (A) at 532J–533A (*Zweni*).

of the relief claimed, do not override the interests of justice when determining the appealability of any order, whether interlocutory or otherwise.[3] In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* (a matter which, coincidently, involved the same parties now before this Court on appeal), the Constitutional Court stated that the interests of justice requirement is not confined to the Constitutional Court but equally applies to this Court.[4] In *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others*,[5] the Constitutional Court pertinently addressed the appealability of an order dismissing an exception and held that the interests of justice criterion is 'more expansive' and the operative standard.

[3] An appeal should thus proceed if its appealability or the granting of leave to appeal best serves the interests of justice — regardless of any pre-Constitution common-law impediments.[6] The interests of justice will depend on a careful evaluation of all the relevant factors in a particular case.[7] Consequently, the dismissal of an exception may be appealable if the circumstances of the case warrant it. This leads me to the facts of the case at hand.

The facts

[4] The first appellant, Lebashe Investment Group (Pty) Ltd, is an investment holding company, while the second and third appellants, Harith General Partners (Pty) Ltd and Harith Fund Managers (Pty) Ltd, operate as fund managers, investing on behalf of their investors in infrastructure projects across Africa. The fourth, fifth, and sixth appellants are directors of these companies, though not all of them hold directorships in the same entity. Collectively, they are referred to as 'the appellants'.

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[3] *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC); [2022] ZACC 34 para 41*(Lebashe).*

[4] *Lebashe* para 45. See also *Cyril and Another v The Commissioner for the South African Revenue Service* [2024] ZASCA 32 para 7; *Tshwane City v Vresthena (Pty) Ltd and Others* [2024] ZASCA 51; 2024 (6) SA 159 (SCA) para 10; *MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another* 2025 (1) SA 392 (SCA) para 32.

[5] *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC).

[6] *Tshwane City v Afriforum and Another* 2016 (6) SA 279 (CC); 2016 (9) BCLR 1133; [2016] ZACC 19 paras 40 – 41.

[7] *Lebashe* paras 33,34,41,42,43,45,46.

[5] On 15 August 2018, the appellants issued summons against the respondents, seeking R2 million in damages for defamation and *injuria*. Their claims arose from two publications alleged to be *per se* defamatory: a letter authored by the second respondent, Mr Bantubonke Holomisa, a Member of Parliament and the President of the first respondent, the United Democratic Movement (UDM), a registered political party. The letter, dated 26 June 2018, was written on the UDM's official letterhead and addressed to the President of the Republic of South Africa, and made available to the public. The second publication was a tweet posted on UDM's account on the social media platform X (formerly Twitter) on 1 July 2018, in which the sixth appellant and others were referred to as 'hyenas' (the tweet).[8]

[6] The particulars of claim assert that the statements in the letter titled *'Unmasking Harith's and Lebashe's Alleged Fleecing of the Public Investment Corporation,'* which were affirmed as accurate in the tweet, were intended and understood by an ordinary reader of reasonable intelligence to suggest that the appellants were deeply involved in a longstanding and escalating corrupt scheme. This scheme allegedly implicated, among others, the then CEO of the Public Investment Corporation (PIC), a state-owned vehicle and asset-management company established in terms of s 3 of the Public Investment Corporation Act 23 of 2004 and the sixth respondent, who served as a non-executive director of the first appellant and chairman of the second and third appellants. It was alleged to involve the unlawful depletion of billions of Rand from the PIC. Furthermore, the appellants' purported misconduct was depicted as being so pervasive that it rendered the alleged state capture by the Gupta family insignificant by comparison. The letter also called upon the President to initiate an investigation into the PIC. Subsequently. This led to the establishment of a Commission of Inquiry under Mr. Justice Mpati (the PIC Commission of Inquiry).

[8] The tweet read as follows: '*The proximity of Harith & Lebashe directors to PIC is making an interesting read. We are spot on. They seem to be trusted Indunas. The sooner President Ramaphosa agrees to investigate his fellow comrades like Jabu Moleketi & other hyenas, the better.'*

[7] In their initial plea to the particulars of claim on 9 October 2018, the respondents admitted to publishing the material and acknowledged that it concerned the appellants. However, they denied that the material was inherently defamatory of the appellants or that it was published wrongfully or with intent to injure (*animo iniuriandi*). Their primary defence was that the letter merely highlighted serious allegations of misconduct, brought forward by a whistle-blower, concerning a conflict of interest. These allegations implicated the sixth appellant, who, while serving as both Deputy Minister and chairperson of the PIC, allegedly violated s 96 of the Constitution by approving transactions that benefited the first, second, and third appellants, organisations in which he held positions as director and chairperson.

[8] The respondents contended that the flow of funds to the entities provided sufficient evidence of a breach of the Public Finance Management Act 1 of 1999 and the Constitution, warranting an investigation. They argued that this instance exemplified state capture and should be examined alongside other similar allegations. Given their role as a political party and a Member of Parliament, they asserted that they had a duty to call on the President to initiate an investigation, which they duly did. They also pleaded that any person who is involved in allegations of corruption is, metaphorically speaking, a hyena.

[9] On 13 December 2019, the Report of the PIC Commission of Inquiry into the Allegations of Impropriety at the Public Investment Corporation (the PIC Report) was made released. Nearly two years later, on 7 November 2021, on the eve of the trial, the respondents filed a notice seeking to amend their plea. Their proposed amendment was extensive, aiming to insert verbatim excerpts from the PIC Report. The report itself concluded that *'[t]here are clear instances where the Commission found that directors and/or employees benefited unduly from the positions of trust that they held.'* The amendments to the plea conclude, at paragraph 6A.66, with the averment that the published material is therefore not *per se* defamatory of the plaintiffs:

'*Accordingly, given the proper interpretation of the impugned letter, the fact that the President yielded to the Defendants' request and the PIC Report made the foregoing findings must contextually, axiomatically and objectively mean that the impugned letter is not defamatory, and certainly not per se defamatory.'*

[10] Despite the appellant's objection thereto, the amendment was allowed on 4 November 2022. As a result, the appellants raised an exception to the amended plea. The crux of the exception was that the amendment lacked averments which were necessary to sustain a defence and that the contents of the PIC Report were entirely irrelevant to the meaning of the letter and the tweet. In the circumstances, the appellants sought an order upholding the exception and striking out the paragraphs from the PIC Report.

[11] The court a quo dismissed the exception with costs, concluding that the respondents' amendment merely incorporated the findings of an independent commission established by the President concerning the impugned statements and allegations. The court further held that the pleading presented a clear and concise statement of material facts with sufficient particularity, enabling the appellants to respond if necessary. It is this order that the appellants now seek to appeal.

Is the order appealable?

[12] In determining the appealability of a matter, several factors must be considered. These include whether the relief granted was final in effect, whether it definitively determined the rights of the parties, and whether it disposed of a substantial portion of the relief claimed.[9] Additionally, considerations such as convenience, timing, delay, expedience, potential prejudice, the avoidance of piecemeal appeals, and the broader pursuit of justice also play a crucial role.[10]

[13] As a starting point, when evaluating the *Zweni* factors, it is well established that an order dismissing an exception is generally not final in effect, unless the exception

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[9] *Zweni* at 532J–533A; *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC); 72 SATC 135 para 49 *(Scaw).*

[10] *Government of the Republic of South Africa and Others v Von Abo* [2011] ZASCA 65; 2011 (5) SA 262 (SCA); [2011] 3 All SA 261 (SCA) para 17; *Scaw; City of Cape Town v South African Human Rights Commission* [2021] ZASCA 182 paras 10-12.

specifically challenges the court's jurisdiction.[11] The order of the court a quo is no exception. While the court is unlikely to change its stance, the same issue may still be raised at trial upon a consideration of fresh argument and further authority.[12] And despite its prior decision, the trial court still has the discretion to reconsider, modify, or uphold the court a quo's ruling.[13] An appeal to this Court is thus premature while the matter remains unresolved, as it seeks to pre-empt a decision the trial court has yet to finalise.[14] Moreover, the order did not definitively determine the parties' rights, nor did it dispose of a substantial portion of the relief sought in the main proceedings.

[14] The appellants argue that the appeal should nevertheless be determined in the interests of justice as they are prejudiced by the plea in its current form. Firstly, they contend that the amendment, reflected in the introductory words of paragraphs 6 and 15 of the amended plea, is solely aimed at establishing 'the correct meaning' of the material admittedly published by the respondents. This approach, so they argue, is impermissible, as the contents of the PIC Report cannot be relied upon to determine the meaning of the published material. As a result, they would be unable to plead meaningfully to the amended plea or mitigate the 'havoc' it would allegedly create at trial due to its irrational and improper nature.

[15] Secondly, it is argued further by the appellants that if paragraphs 6A and 15A of the amended plea remain in the pleadings, the trial, originally expected to last one or two days, will extend over several weeks, leading to evident prejudice and a significant waste of resources. This is so because the amended plea constitutes a mixture of evidence and opinion of another tribunal that is neither a court of law nor a final arbiter of fact, which cannot be incorporated into the plea as facts. Conversely, they maintain that if the

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[11] *Maize Board* paras 14 and 15; ***Tembani and Others v President of The Republic Of South Africa and Another*** [2022] ZASCA 70; 2023 (1) SA 432 (SCA); *TWK* ; See however *Minister of Water and Environmental Affairs and Another v Really Useful Investments 219 (Pty) Ltd* [2016] ZASCA 156; [2017] 1 All SA 14 (SCA); 2017 (1) SA 505 (SCA) para 2.

[12] *Blaauwbosch Diamonds Ltd v Union Government (Minister of Finance)*1915 AD 599 at 601.

[13] *TWK* para 32.

[14] Ibid para 31.

exception is upheld, a substantial portion of the respondents' pleaded case will be eliminated, allowing the trial to proceed efficiently on the true issues in dispute.

[16] Lastly, the appellants contend that the introduction of the PIC Report in the plea makes the amended plea overly lengthy and aside from the denial that the material is *per se* defamatory and was published with the intent to defame, the plea creates confusion and uncertainty regarding what other possible defences the respondents seek to rely on. As a result, it is contended that the plea is vague and embarrassing.

[17] These arguments are without merit. The so-called havoc that would be created, the extension of the trial and any uncertainty about the respondents' defences, are easily eliminated by a request for trial particulars (rule 21) and the proceedings under rule 37 of the Uniform Rules of Court. These are designed to narrow the issues between the parties and to promote the effective disposal of litigation. The appellants' arguments do not support the conclusion that the order is appealable.

[18] Interlocutory orders are, for the most part, not appealable, because fragmenting a case through appeals on individual aspects before the matter is fully resolved in the court of first instance is undesirable.[15] Allowing the appeal in the present matter would result in piecemeal adjudication, prolong the litigation, and lead to a wasteful use of judicial resources and costs.[16] The summons was issued more than seven years ago and it is in the interests of justice that the matter proceed to trial. The Constitutional Court in *Psychological Society of South Africa v Qwelane*[17] has affirmed that it will only intervene in ongoing lower court proceedings in exceptional circumstances—specifically, in cases of *great rarity*, where there is a threat of *grave injustice* and intervention is essential to achieving justice.[18] This is not such a case.

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[15] *Minister of Health and Others v Treatment Action Campaign and Others (No 1)* 2002 (5) SA 703 (CC); 2002 (10) BCLR 1075 (CC) para 9*; Cloete and Another v S and a Similar Application* 2019 (4) SA 268 (CC); 2019 (2) SACR 130 (CC); 2019 (5) BCLR 544 (CC) para 57.

[16] *South African Informal Traders Forum and Others v City of Johannesburg and Others* [2014] ZACC 8; 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) para 20*(g); Economic Freedom Fighters v Gordhan and Others* [2020] ZACC 10; 2020 (8) BCLR 916 (CC); 2020 (6) SA 325 (CC) para 49.

[17] *Psychological Society of South Africa v Qwelane and Others* [2016] ZACC 48; 2017 (8) BCLR 1039 (CC).

[18] Ibid para 40.

[19] The appellants have not demonstrated any irreparable prejudice that cannot be remedied within the framework of the Uniform Rules of Court if the appeal is not entertained. The trial court retains the authority to revisit the findings of the court *a quo* and will ultimately determine the proper interpretation of the pleadings, the true issues in dispute, the relevance of matters raised, and the admissibility of evidence. The appellants' right to object to evidence on the grounds of relevance, as well as established principles in defamation law, remains intact and is not curtailed by the order of the court a quo.

[20] Consequently, the papers fail to disclose any facts that would justify granting leave to appeal in the interests of justice. In the result the following order is made:
The appeal is struck from the roll with costs, such costs to include the costs of the application for leave to appeal, all of which will include those consequent on the employment of two counsel.

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L WINDELL

ACTING JUDGE OF APPEAL

Appearances

For the appellant:	D I Berger SC, with B M Slon
Instructed by:	Nicqui Galaktiou Inc, Johannesburg
	Claude Reid Attorneys, Bloemfontein
For the respondent:	T Ngukaitobi, with M Kasiboto and J Naidoo
Instructed by:	Mabuza Attorneys, Johannesburg
	Matsepes Inc, Bloemfontein