**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Not Reportable**

Case no: 632/2023

In the matter between:

**ENGELA DOROTHEA MARIA ANNANDALE** **APPLICANT**

and

**MEINTJES AND MEINTJES REKENMEESTERS CC** **FIRST RESPONDENT**

**OLD MUTUAL TRUST (PTY) LTD**
**t/a OLD MUTUAL TRUST** **SECOND RESPONDENT**

**Neutral citation:** *Annandale v Meintjes and Meintjes Rekenmeesters CC and Another* (632/2023) [2025] ZASCA 113 (29 July 2025)

**Coram:** MOCUMIE, KEIGHTLEY JJA and PHATSHOANE AJA

**Heard:** 8 May 2025

**Delivered**: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the hand-down of the judgment is deemed to be 11h00 on 29 July 2025.

**Summary:** Section 17(2)*(f)* of the Superior Courts Act 10 of 2013 – Referral by the President of the Supreme Court of Appeal – Reconsideration of refusal of a petition by the Supreme Court of Appeal – exceptional circumstances not established – matter struck from the roll.

## ORDER

**On application for reconsideration:** referred in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013:

1 The matter is struck from the roll.

2 The applicant is to pay the costs of the application for reconsideration.

## JUDGMENT

**Phatshoane AJA (Mocumie, Keightley JJA concurring):**

[1] This is an application for the reconsideration of a refusal by two judges of this Court to grant special leave to appeal on petition against a majority judgment and order of the full court of the Gauteng Division of the High Court, Pretoria (the full court). The application is pursuant to a referral by the President of this Court under s 17(2)(*f*) of the Superior Courts Act 10 of 2013 (the Superior Courts Act).

[2] The first respondent, Meintjes and Meintjes Rekenmeesters CC (the practice), launched an application in the high court for an order: that its income and expenses for the period 1 June 2015 to 14 July 2017 be investigated, calculated and reported on by an auditor to be appointed by the chairperson of the South African Institute of Chartered Accountants within ten business days from date of the order; that the applicant, Ms Engela Dorothea Maria Annandale (Ms Annandale), provide the said auditor with any or all the financial information and documents as may be requested for purposes of the execution of the auditor's mandate; and that two-thirds of the practice's income for the specified period, after deduction of expenses and any income already paid to it by Ms Annandale, be reimbursed by Ms Annandale to the practice within ten business days of the auditor's report.

[3] The sole member of the practice, Mr Johannes Hendrick Meintjes, an accountant and auditor, passed away on 27 April 2015. Old Mutual Trust (Pty) Ltd t/a Old Mutual Trust (the trust) is the executor of the estate of the late Mr Meintjes, whose sole beneficiary is his spouse, Ms Heila Antoinette Meintjes (Ms Meintjes), the deponent to the founding affidavit in the high court. On 20 May 2015, Ms Meintjes sought and was granted permission by the trust to continue with the accounting practice. She indemnified the trust against any loss suffered and claims which may be made against the trust or the estate, and costs arising from the continuation of the accounting practice. Ms Meintjes is not an accountant.

[4] Ms Annandale is an accountant and a registered tax practitioner with 20 years of professional experience, currently self-employed through EA Financial Services. It is common cause that during June 2015 an oral agreement was concluded between Ms Annandale and the practice in terms of which Ms Annandale would render accounting services to the clients of the practice. The exact terms of the agreement were contested in the high court. Ms Meintjes' version, on the one hand, was to the effect that Ms Annandale would perform the necessary professional work for the practice as a sub-contractor and oversee and submit the work done by the practice's employees. She would be entitled to one-third of the net profit of the practice as compensation after the deduction of the business expenses, whereas two-thirds would be allocated to the practice. Ms Annandale, on the other hand, contended that the agreement was that she would take over the entire practice, which at that stage, she claimed, was effectively defunct, in exchange for concluding the outstanding professional work for the practice's several clients to the value of R218 000.

[5] Ms Annandale discharged her obligations to the practice from June 2015 until 14 July 2017 reporting for duty at the practice's office, situated in Pretoria North, twice per week. Ms Meintjes averred that, on 13 July 2017, she discovered that Ms Annandale had transferred the practice's trust account into her own name and accepted payments from the practice's clients directly into that account over which Ms Meintjes had no control or insight. She also discovered that Ms Annandale had created a new E-filing profile on

behalf of the practice to which Ms Meintjes had no access. In addition, she averred that she became aware that the practice had accumulated a net profit of R3 166 158 during the period of Ms Annandale's engagement and that Ms Annandale had failed to pay the practice R2 110 772 which was due and payable. Ms Annandale disputed these averments.

[6] An exchange of correspondence between the parties' respective attorneys followed from 19 September 2017 to 9 October 2017 in terms of which the practice proposed that an independent auditor be appointed to determine the amount due to the practice. Ms Annandale was averse to the proposals insisting instead that each party appoint its own auditor to determine any amounts due. This precipitated the launching of the application in the high court, which was initially argued on 12 June 2018, before Collis J. On 20 November 2018 Collis J ruled that there was a real, genuine and *bona fide* dispute of fact on the nature of the agreement which could only be determined with the aid of oral evidence. Accordingly, the high court referred the dispute for the hearing of oral evidence on this limited core aspect. Having heard the evidence, the high court had no difficulties in accepting the evidence adduced by three witnesses called by the practice because, so reasoned the high court, they gave an honest account and corroborated each other. The high court rejected Ms Annandale's evidence as improbable and granted the practice the relief sought in its notice of motion.

[7] In the wake of the order granted by the high court, Ms Annandale applied for leave to appeal, which was refused. On 22 July 2020 this Court granted leave to appeal to the full court. The appeal was considered by Neukircher and Sardiwalla JJ concurring and Malungana AJ dissenting. The majority of the full court accepted the high court's credibility findings. It reassessed the evidence and listed the following improbabilities in Ms Annandale's version:

'(a) on her version she [agreed] to take over [the] existing clients and do all the outstanding work (valued at R218 000) without receiving one cent of that amount which, on the evidence has already been paid to the [practice]; – this was in any event only discovered after the agreement in June 2015 and thus it is not probable that this was mooted at the initial meeting …. or would have formed a basis for the agreement contended for by Ms Annandale;

(b) no client had ever received an email informing them that she had taken over their portfolio and giving them the option of either moving their business to her (or to another accountant) or remaining with the [practice] – thus clients would have thought she was working for the [practice];

(c) on her version, she agreed that [the] fees received would be allocated one-third to expenses, one-third to salaries and one-third to her – but if she is taking over the client base and the clients pay her, the money is hers to do with as she pleases and it makes no sense that she would explain to her employees how the money earned would be allocated;

(d) why she agreed to operate out of the Pretoria North Office [Meintjes & Meintjes office]? She has offices in Centurion. She is now saddled with extra unnecessary expenses of R10 000 office hire (and she was only there [two] times a week), staff salaries, insurance for office furniture and equipment which she says became hers and yet when she left, she did not take with;

(e) there is no evidence that Mrs Meintjes conducted negotiations – all the evidence points to Mrs Koen conducting them on behalf of Mrs Meintjes;

(f) there are no e-mails or documents pointing to any formal or informal employment contracts with Mrs Koen or Mrs Van Taak [the employees that worked for the practice prior to Ms Annandale's engagement] and they testified that they did not have one with her.'

[8] The majority of the full court found that the high court correctly rejected Ms Annandale's evidence as improbable and appropriately granted the relief sought. Accordingly, on 28 February 2023, the majority dismissed the appeal. Ms Annandale sought special leave to this Court on 06 April 2023 to appeal against the judgment and order of the full court. Ms Annandale's grounds of appeal, when she sought special leave, were in broad outline: that the high court and the majority of the full court erred in rejecting her version of the terms of the agreement when there had been undisputed financial records which provided corroboration. She argued that the high court and the full court had erred in accepting the practice's version which was contradictory. She therefore contended that there were reasonable prospects of success on appeal. Additionally, she argued, special circumstances and compelling reasons were extant for the hearing of the appeal by this Court because the full court delivered a split decision.

[9] In *Cook v Morrison and Another*,[1] this Court said:

'The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list (*Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986 (2) SA 555 (A) at 564H–565E; *Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi* [2017] ZASCA 85; 2017 (2) SACR 384 (SCA) para 21).'[2]

Two judges of this Court dismissed Ms Annandale's petition because in their view the requirements for special leave were not satisfied.

[10] Ms Annandale subsequently applied to the President of this Court in terms of s 17(2)(*f*) of the Superior Courts Act, contending that exceptional circumstances were present which justified granting the reconsideration of her special leave to appeal. On 27 February 2024, the President referred the decision dismissing Ms Annandale's application for special leave to appeal to the Court for reconsideration and, if necessary, variation. The parties were directed to be prepared, if called upon to do so, to address the Court on the merits of the appeal. When the referral was made, s 17(2)*(f)* of the Superior Courts Act provided:

'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in *exceptional circumstances*, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'[3] (Emphasis added.)

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[1] *Cook v Morrison and Another* [2019] ZASCA 8; [2019] 3 All SA 673 (SCA); 2019 (5) SA 51 (SCA).
[2] Ibid para 8.
[3] The section was amended by s 28 of the Judicial Matters Amendment Act 15 of 2023, which came into effect on 3 April 2024. It now reads as follows:
'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, *in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute*, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.' (Emphasis added.)

[11] The enquiry into what constitutes 'exceptional circumstances' is a factual one to be evaluated on a case-by-case basis.[4] 'What is ordinarily contemplated by the words ''exceptional circumstances'' is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different; ''besonder'', ''seldsaam'', ''uitsonderlik'', or ''in hoë mate ongewoon''.'[5]

[12] In *Avnit v First Rand Bank Ltd*,[6] Mpati P underscored the import of s 17(2)(*f*) as follows:

'In the context of s 17(2)(*f*) the President will need to be satisfied that the circumstances are truly exceptional before referring the considered view of two judges of this court to the court for reconsideration. I emphasise that the section is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused. It is intended to enable the President of this Court to deal with a situation where otherwise injustice might result. An application that merely rehearses the arguments that have already been made, considered and rejected will not succeed, unless it is strongly arguable that justice will be denied unless the possibility of an appeal can be pursued. A case such as *Van der Walt*[7] may, but not necessarily will, warrant the exercise of the power. In such a case the President may hold the view that the grant of leave to appeal in the other case was inappropriate.

A useful guide is provided by the established jurisprudence of this court in regard to the grant of special leave to appeal. Prospects of success alone do not constitute exceptional circumstances. The case must truly raise a substantial point of law, or be of great public importance or demonstrate that without leave a grave injustice may result. Such cases will be likely to be few and far between because the judges who deal with the original application will readily identify cases of that ilk. But the power under section 17(2)*(f)* is one that can be exercised even when special leave has been refused, so ''exceptional circumstances'' must involve more than satisfying

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[4] *Liesching and Others v S and Another* [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC) (*Liesching I*) para 55; *Ekurhuleni Metropolitan Municipality v Business Connexion (Pty) Ltd* [2025] ZASCA 41; 2025 JDR 1488 (SCA); [2025] JOL 68853 (SCA) para 3.

[5] *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, and Another* 2002 (6) SA 150 (C) at 156H-157C. See also *Ntlemeza v Helen Suzman Foundation and Another* [2017] ZASCA 93; [2017] 3 All SA 589 (SCA); 2017 (5) SA 402 (SCA) para 37.

[6] *Avnit v First Rand Bank Ltd* [2014] ZASCA 132; 2014 JDR 2014 (SCA); [2014] JOL 32336 (SCA) (*Avnit*).

[7] *Van der Walt v Metcash Trading Ltd* [2002] ZACC 4; 2002 (4) SA 317 (CC); 2002 (5) BCLR 454 (CC).

the requirements for special leave to appeal. The power is likely to be exercised only when the President believes that some matter of importance has possibly been overlooked or grave injustice will otherwise result.'[8]

[13] The ambit of this appeal is circumscribed. The crisp question is whether there are exceptional circumstances that establish the necessary jurisdiction for this Court to reconsider the decision on petition to refuse special leave. If we should find that there are no exceptional circumstances, that would be the end of the reconsideration of the appeal.

[14] To demonstrate that exceptional circumstances were present Ms Annandale submitted that she is a divorced mother of two teenagers. The acrimonious divorce left her family life in 'tatters'. If this Court does not afford her the opportunity to reverse the decision of the high court, her family, her two employees and their families stand to suffer irreparable harm, which would offend against the principle of 'ubuntu'.[9] This, she argued, would ruin her livelihood and those of the families she supports as they are dependent on the income she provides. The effect of the execution of the high court's judgment, she contended, would require paying an amount in excess of two years' of living expenses, effectively destroying her accounting practice, which had teetered on the brink of collapse during the Covid-19 pandemic and was currently recovering.

[15] The attack on her credibility by the high court, if upheld, Ms Annandale argued, would have a grave impact on her reputation as an accountant and end her practice. This, she argued, ought to be resolved by this Court so that her credibility is restored. She lamented that the high court and the majority of the full court ignored 'common cause documentary evidence'. Ms Annandale also regurgitated the averments contained in her

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[8] *Avnit* paras 6-7.

[9] The principle was explained in *S v Makwanyane and Another* 1995 (6) BCLR 665; 1995 (3) SA 391 (CC); [1996] 2 CHRLD 164; 1995 (2) SACR 1 para 307 as '[g]enerally, *ubuntu* translates as *humaneness*. In its most fundamental sense it translates as *personhood* and *morality*. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality.' (Emphasis in original quote.)

application for special leave concerning the contradiction in the practice's account which, it bears repeating, two judges of this Court have already considered.

[16] In an attempt to further show the presence of exceptional circumstances, counsel for Ms Annandale contended, without more, that:

'"Substantial points of law'' are also raised in this matter, as amplified by the split judgment of the full court… . This is however an exceptional circumstance of great public importance, since one of the central issues in this case is whether a court can merely ignore or fail to give due weight to undisputed documentary evidence – which directly impacts upon commercial certainty in business, and that agreements reached should be enforced.'

[17] Counsel conceded that a split decision of the full court on its own would not constitute an exceptional circumstance. While the appeal may be important to the parties personally, the case raises nothing of public importance that would warrant the special attention of this Court on appeal. There is great diversity in the personal circumstances of litigants who approach the courts for relief. Without trivialising the personal impact that the outcome of litigation may have on an individual litigant, in determining the existence of exceptional circumstances, the Court should properly direct itself to the relevant facts and principles at hand. The personal circumstances advanced by Ms Annandale are unique to her and do not create exceptional circumstances. Ordinarily, in the application of substantive issues of law, to come to a conclusion on the disputed issues, a court must make findings on, *inter alia*, the credibility of the various factual witnesses. The fact that certain adverse credibility findings were made against Ms Annandale in the high court does not merit any interference by this Court on appeal.

[18] Much was made by counsel for Ms Annandale that the high court and the full court failed to attach weight to the documentary evidence presented and therefore erred in accepting the practice's version of the agreement. How the high court and full court applied the substantive issues of law and fact, and assessed the probabilities, is not an exceptional circumstance. This Court has held that s 17(2)*(f)* is not intended to afford

dissatisfied litigants a further opportunity to secure relief that has already been refused.[10] An application that merely rehearses the arguments that have already been made, considered and rejected, as this one does, will not succeed,[11] unless it is strongly arguable that justice will be denied without the possibility of an appeal. No cogent argument has been advanced, nor could I find any grounds for concluding that this would be the case here.

[19] While the prospects of success alone do not constitute an exceptional circumstance, to the extent that they are relevant, I address them briefly. The high court and the full court correctly determined that the parties' versions on the terms of the oral agreement were mutually destructive. They invoked the principles in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others*[12] in the evaluation of the evidence and considered the credibility of the various factual witnesses; their reliability; and the probabilities.[13] There were immaterial contradictions in the practice's version, but overall, as observed by both the high court and the full court, the witnesses corroborated each other and were truthful. There is nothing to indicate any misdirection by the high court and the majority of the full court in accepting the practice's version. In stark contrast, as amply demonstrated by the transcript of the proceedings, Ms Annandale's evidence was replete with contradictions and obvious improbabilities.

[20] Accordingly, I conclude that exceptional circumstances are non-existent in this case. It follows that in the absence of this jurisdictional fact, the application must be struck from the roll. Costs are to follow the result.

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[10] *Avnit* para 6; See also *Liesching and Others v S* [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) (*Liesching II*) para 139; *Nel v S* 2025 JDR 2552 (SCA) (*Nel*) para 7.
[11] *Avnit* para 6. See also *Motsoeneng v South African Broadcasting Corporation SOC Ltd and Others* [2024] ZASCA 80; 2025 (4) SA 122 (SCA) para 18; *Nel* para 22*; Minister of Police and another v Ramabanta* [2025] JOL 69177 (SCA) para 13.
[12] *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA).
[13] Ibid para 5.

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

1 The matter is struck from the roll.

2 The applicant is to pay the costs of the application for reconsideration.

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M V PHATSHOANE

ACTING JUDGE OF APPEAL

**Appearances**

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| For the applicant: | G V Meijers |
| Instructed by: | Dawes Law, Sandton |
| | Claude Reid Attorneys, Bloemfontein |
| For the first respondent: | M Snyman SC |
| Instructed by: | ML Schoeman Attorneys, Pretoria |
| | Honey Attorneys Inc., Bloemfontein. |