

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 69804/2017

In the matter between:

**ASHU CHAWLA**

Applicant

and

**TREVOR ANDREW MANUEL**

Respondent

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**JUDGMENT SUMMARY**

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*Application for leave to appeal – order referring specific issue to oral evidence in terms of Uniform Rule of Court (6)(5)(g) – appealability of order – order based on finding that Promotion of Access to Information Act 2 of 2000 (PAIA) was applicable to applicant as he fell within the definition of ‘private body’ as defined by PAIA – applicant argued that the ‘interests of justice’ standard requires leave to appeal to be granted – matter would not have been referred to oral evidence if finding that PAIA applied to applicant had not been made – respondent argued that postponement of application for a referral to oral evidence is not appealable – lacks essential features of appealable order – interests of justice do not override fact that a referral to oral evidence is not appealable, even where basis for order impugnable – reasons for interlocutory judgments or orders not appealable – application premature – application for leave to appeal dismissed with costs.*

**Background**

The respondent, Manuel, brought an application in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA) to obtain certain records he believed to be in the possession of the Sahara Computers (Pty) Ltd (Sahara) and Ashu Chawla (Chawla), the applicant herein.

Sahara and Chawla alleged that the documents sought by Manuel did not exist, and if they did exist, it was not in their possession. The Court referred the matter to oral evidence to determine whether Sahara and Chawla were, or ever had been, in possession of the records sought by Manuel. Chawla appealed this decision.

### **Legal submissions**

The Court had to determine whether its decision was appealable. The applicant argued that it would be in the interests of justice to grant leave to appeal. The respondent contended that the decision was not appealable.

The applicant contended that the basis of the order referring the issue to oral evidence was, *inter alia*, the Court's finding that Chawla fell within the definition of a 'private body' in terms of PAIA, and that PAIA was therefore applicable to him. He submitted that, although the order is interlocutory in nature, it was dispositive of question of whether Chawla fell within the purview of PAIA.

The respondent argued that a referral to oral evidence lacks the essential features of an appealable order. The respondent contended that the application for leave to appeal targeted the Court's reasoning, and not the order itself.

### **The Court**

Chawla's application for leave to appeal was not made in respect of the Court's order, but its reasoning. Appealability does not extend to the underlying reasons of a judgment and order. Interlocutory orders may be appealable if it would be in the interests of justice to grant the appeal. In considering the particular circumstances of the case, the Court found that an appeal against a ruling postponing an application and referring it to oral evidence is not appealable – and the interests of justice did not override this principle. The findings of a Court on which it bases this decision are irrelevant, even if they are impugnable. Ultimately, Chawla's application was premature and was accordingly dismissed with costs.

**ORDER:** The application for leave to appeal was dismissed with costs.

**Coram:** Weiner J

**Heard:** 14 February 2019

**Delivered:** 22 February 2019