

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
HELD AT PRETORIA**

**CASE NO: 2024/105172**

**DOH: 9 May 2025**

**DECIDED: 12 MAY 2025**

- 1) REPORTABLE: NO
- 2) OF INTEREST TO OTHER JUDGES: NO
- 3) REVISED.

[Redacted Signature]

**SIGNATURE**

**12 May 2025**

**DATE**

In the matter between:

**ANDISIWE NOMFUNDO MTAKATI**

Applicant

**And**

**MINISTER OF POLICE, REPUBLIC OF  
SOUTH AFRICA**

First Respondent

**STATION COMMANDER,  
BOSCHKOP POLICE STATION**

Second Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 12 May 2025.

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## ORDER

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1. Leave to appeal is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.

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## JUDGMENT

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**Bam J**

### *Introduction*

1. This is an application for leave to appeal the judgment and order of this court of 1 October 2024. The applicant wishes to appeal the order. Her grounds of appeal are set out in her Notice of Application for Leave to Appeal (Notice). The grounds may be summarized thus:
  - (i) This court erred / misdirected itself in finding that the applicant's vehicle is an item that falls within the purview of section 20 of the Criminal Procedure Act, CPA; and
  - (ii) That the requirements of section 22 of the CPA had been met in the circumstances.

2. In furtherance of the first ground of appeal, the applicant submits that the court failed to recognize that the respondents relied on information obtained from nameless people without proof that the vehicle was used in the commission of the offence.
3. The respondents are opposing the application. They submit that the court correctly found that the issue whether the applicant's vehicle had been used in the commission of an offence is common cause between the parties. They further submit that the requirements of section 22 had been met and accordingly no misdirection occurred.
4. I refer to the parties as they were in the original proceedings. In this regard, the applicant refers to Ms Mtakati; the respondents remain the same.

*Applicable legal principles*

5. Applications for leave to appeal are governed by Section 17 (1) (a) (i) and (ii). The subsections state that leave to appeal may only be granted where the judge or judges are of the view that the appeal would have prospects of success or where there are some other compelling reasons as to why the appeal should be heard. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes.’<sup>1</sup> ‘A mere possibility of success, an arguable case or one that is not

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<sup>1</sup> *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020).

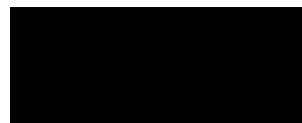
hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’<sup>2</sup>

*Merits*

6. The present application is not merely concerned with spoliation and the legal principles thereto, it impacts the rights guaranteed in the Bill of Rights. I am thus minded to grant leave to appeal to the Full Court of this Division.

*Order*

1. Leave to appeal is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.



**N.N BAM J**  
**JUDGE OF THE HIGH COURT**  
**OF SOUTH AFRICA, GAUTENG**  
**DIVISION, PRETORIA**

**Date of Hearing:** 09 May 2025

**Date of Judgment:** 12 May 2025

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<sup>2</sup> *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016).

**Appearances:**

**Counsel for the Applicant:**

**Adv M.A Da Silva SC (Ms)**

Instructed by:

T Noah & Sons Inc

c/o Mngqingo Attorneys

Pretoria

**Counsel for the Respondents:**

**Adv K Mondlane**

Instructed by:

State Attorneys

Pretoria