

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 069952/2023

DATE: 06-10-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 6 OCTOBER 2023

SIGNATURE

10 In the matter between

VUSELELA SECURITY SPV (RF)

Plaintiff

and

LIZOXOLA PROPERTIES

Defendant

**J U D G M E N T**

**LEAVE TO APPEAL**

20 **WILSON, J:** This is an application for leave to appeal  
against an order I granted in Urgent Court on the 25<sup>th</sup> of  
July 2023.

It is not necessary for me to traverse the merits of  
the application because as Mr Cooke pointed out and as I  
recorded in my judgment, the order now sought to be  
appealed against was granted by consent, save in one

respect to which I will presently turn.

It is well-established that an appeal does not lie against an order that has been taken by consent. Any such challenge to an order taken by consent may, in certain circumstances, be the subject of a rescission application, whether under Rule 42 or the common law, but there is no basis on which it would be appropriate to grant leave to appeal against a consent order. It follows that, save in one respect, the application must be dismissed on that ground  
10 alone.

The only aspect of my order that was not granted by consent was a direction that the applicant for leave to appeal pay the costs of the application on the attorney-and-client scale.

The reasons I gave for that order were that, first of all, costs on the attorney-client scale were provided for in the agreement upon which the respondent in the application for leave to appeal sued in the court *a quo*. Second, there were no facts under oath before me that would have justified  
20 a departure from that contractual undertaking, even though I accepted it in my judgment that such a departure is possible and the courts are not bound by contractual undertakings to pay costs on a particular scale.

Since the applicant for leave to appeal has not turned up to argue otherwise, I have no basis on which I

could find that I was wrong to come to that conclusion. I might as well record, in addition, that in the application for leave to appeal no specific grounds are set out that so much as attack the costs order, let alone lead me to conclude, that I could have been wrong to grant costs on the attorney-and-client scale.

No case has been made out that there is any prospect of setting aside the costs order on appeal. It follows from all of this that the application for leave to  
10 appeal must be dismissed.

The application must be dismissed with costs on the attorney-and-client scale, because that is the costs order I gave in the court *a quo* and there is no reason to depart from it in the application for leave to appeal.

I am setting all of this out to record that Mr Cooke has presented full argument on the application and that I have considered the application on its merits. notwithstanding the fact that the applicant has chosen not to come to court and argue it before me.

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For all those reasons, I make the following order:

- (1) The application for leave to appeal is dismissed.
- (2) The applicant for leave to appeal is to pay the costs of the application on the scale as between attorney

069952/2023-elo  
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JUDGMENT  
Application for Leave to Appeal

and client.

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**WILSON, J**

**JUDGE OF THE HIGH COURT**

**DATE: 6 October 2023**