

Supreme Court of Appeal (the SCA) and fear that their appeal may not be considered on the merits.^[1] The application for leave to appeal to this Court is not conditional upon their application to the SCA being refused but on a refusal by the SCA to consider the appeal on its merits.

[2] The application is misconceived and unnecessary. Rules 19(1) and (2) of the rules of this Court provide:

“(1) The procedure set out in this rule shall be followed in an application for leave to appeal to the Court where a decision on a constitutional matter, other than an order of constitutional invalidity under section 172(2)(a) of the Constitution, has been given by any court including the Supreme Court of Appeal, and irrespective of whether the President has refused leave or special leave to appeal.

(2) A litigant who is aggrieved by the decision of a court and who wishes to appeal against it directly to the Court on a constitutional matter shall, within 15 days of the order against which the appeal is sought to be brought and after giving notice to the other party or parties concerned, lodge with the Registrar an application for leave to appeal: Provided that where the President has refused leave to appeal the period prescribed in this rule shall run from the date of the order refusing leave.”

[3] These rules allow a litigant aggrieved by a decision of any court, including the SCA to appeal against that decision to this Court within 15 days of the order against which the appeal is directed. It is therefore competent for an application for leave to appeal to be brought within 15 days of the date of a decision by the

SCA refusing to consider the appeal on its merits. The applicants can also apply for leave to appeal within 15 days of the refusal of an application for leave to appeal to the President of the SCA. The application for “conditional” leave to appeal must be refused.

Order

[4] The application is dismissed.

Chaskalson CJ, Madala J, Mokgoro J, Moseneke J, O’Regan J, Sachs J, Skweyiya J, Van der Westhuizen J, Yacoob J.

¹¹¹ It may be that they anticipate that the SCA will not exercise jurisdiction to hear the appeal following its decision in the cases of *S v Basson* [2003] 3 All SA 51 (SCA) and *R v Adams* 1959 (3) SA 753 (A).