

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2021/43349**

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

7 FEBRUARY 2025

DATE

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

R1 SECURITY SERVICES CC

Respondent

Judgment in the application for leave to appeal

MODIBA J

[1] The applicant seeks leave to appeal this court's judgment and order of 21

November 2024, dismissing its application where it sought the rescission of an order this court granted by default on 22 February 2024. The respondent opposes the application.

[2] I have considered the grounds for appeal as set out in the applicant's application for leave to appeal. I have also considered the written and oral submissions advanced on behalf of the applicant as well as oral submissions advanced on behalf of the respondent, guided by the provisions in section 17(1)(a) of the Superior Court's Act.¹ I find that none of the grounds of appeal relied on by the applicant will yield a different outcome in the contemplated appeal proceedings.

[3] The fact that the applicant has successfully rescinded an order granted in *Passenger Rail Services v Changing Tides*² (*Changing Tides*) arising from the same cause of action is not a compelling reason for this court to grant leave to appeal because the facts in the two applications are materially distinguishable. Further, contrary to submissions made on behalf of the applicant, the court in *Changing Tides* did not find that service of summons on a driver at the applicant's premises constitutes proper service.³ Thus, there are no conflicting judgments in the two matters on this specific issue.

[4] In the premises, the application stands to be dismissed with costs. I therefore make the following order:

¹ Act 10 of 2013

² *Passenger Rail Services v Changing Tides* Unreported judgment by Kekana AJ handed down on 13 November 2024 under case number Gauteng Local Division Case No: 38292/2021.

³ See paragraph 11 of the judgment in *Changing Tides*.

Order

1. The application is dismissed.
2. The applicant shall pay the respondent's costs.

A handwritten signature in black ink, appearing to be 'L.T. Modiba', is written over a solid black rectangular redaction box.

**JUDGE L.T. MODIBA
JUDGE OF THE HIGH COURT,
JOHANNESBURG**

Appearances

For the Applicant:

P Ngutshana SC

Instructed by Leepile Attorneys Inc

For the Respondent:

MP Van der Merwe SC

Instructed by Albert Hibbert Attorneys

Date of Hearing:

20 January 2025

Date of Judgment:

7 February 2025

MODE OF DELIVERY: This judgment is handed down electronically by transmission to the parties' legal representatives by email, uploading on Caselines and release to SAFLII. The date and time for delivery is deemed to be 10:00am.