

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **54121/2019**

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED:

DATE: **14 May 2024**

SIGNATURE:

In the matter between:

KAREL JOHANNES VAN AS N.O.

First Applicant

STAR STONE CRUSHERS CC

Second Applicant

KAREL JOHANNES VAN AS N.O.

Third Applicant

CHRISTINE CATHERINE VAN AS N.O.

and

GETRUIDA SUSANNA JACOBS N.O.

First Respondent

DAWID MATTHEE N.O.

Second Respondent

GETRUIDA SUSANNA JACOBS N.O.

Third Respondent

DAWID MATTHEE N.O.

Fourth Respondent

DAWID MATTHEE N.O.

Fifth Respondent

CYNTHIA MATTHEE N.O.

Sixth Respondent

GERTRUIDA SUSANNA JACOBS

Seventh Respondent

DAWID MATTHEE

Eighth Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

Ninth Respondent

MIDCITY PROPERTY SERVICES (PTY) LTD

Tenth Respondent

FREDERIK JOHANNES VAN AS N.O.

Eleventh Respondent

CHANTELL VAN AS N.O.

Twelfth Respondent

FERDINAND SMARTENRYK DEVENIER N.O.

Thirteenth Respondent

FREDERIK JOHANNES VAN AS

Fourteenth Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

T P Krüger AJ:

- [1] The applicants for leave to appeal, namely the first and second respondents in the main application, in the first place seek leave to appeal against their conviction of contempt of court and consequently the sentence. In the second place, they complain that I erred in directing the Master of the High Court to nominate and appoint three independent trustees for the Deelkraal Behuisings Trust (IT 4808 / 08) in the stead of the first applicant and the first and second respondents, the nub of the criticism aimed at the inclusion of the word “nominate” in the order.

- [2] The applicants for leave to appeal did not change the heading of their application for leave to appeal nor do I find it necessary to do so.
- [3] In **Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021)** the court held that if a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the applicants need to persuade this court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.
- [4] In the main judgment I held that the applicants for leave to appeal had not acquitted them of the burden that they were not *mala fide* or willful. Mrs Jacobs with the apparent approval of Matthee continued to collect the rental due to the trust despite the launch of the contempt application. Even if I were to accept that they initially continued to do so on the advice of the two so-called experts, meaning that they for a time were not in willful disregard of the order granted by Retief AJ, the position changed when the applicants communicated through their attorneys with the attorneys of Mrs Jacobs and Matthee and thereafter launched the contempt application. There is no indication that their attorneys held the same view as the so-called experts. Counsel for Mrs Jacobs and Matthee did not highlight any aspect that indicates that another court would come to a different conclusion which he had not argued or raised in his original heads of argument. In other words, a reasonable prospect of success on appeal was not established in respect of the contempt and sentence.

- [5] The second objection is that I erred in formulating paragraph 4 of the order. In my opinion, the nomination and appointment of the new trustees is a singular event. The intention is the appointment of new trustees, not the process of nomination and selection and then allowing a third party an opportunity to comment on that event and only thereafter appointing the new trustees. If the word “nominate” was excised from the order, the effect would be the same: the appointment of new trustees. I cannot see how another court will interfere in the formulation of the order.
- [5] The applicants for leave to appeal have not persuaded me that they are entitled to leave to appeal.

In the premises, I make the following order:

The application for leave to appeal is dismissed with costs on scale B.

T P KRÜGER
Acting Judge of the High Court, Pretoria

APPEARANCES

Date of hearing:	13 May 2024
Date of delivery:	14 May 2024
Counsel for the applicant:	Adv J.G.W Basson
Instructed by:	Bernhard Van Der Hoven Attorneys
Counsel for the respondent:	Adv A Vorster
Instructed by:	GMI Attorneys