



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

**Reportable / Not
reportable**

Case no: 3457/2023

In the matter between

MAGRIEL DAVID MAREE

APPLICANT

and

ELIZABETH MARGARETH MAREE

FIRST RESPONDENT

MASTER OF THE HIGH COURT

BLOEMFONTEIN

SECOND RESPONDENT

WILLEM LODEWYK SEYFFERT N.O.

THIRD RESPONDENT

**Neutral citation: Magriel David Maree v Elizabeth Margareth Maree and
Others**

Coram: Chesiwe J

Heard: Heard on the papers as per the directive to file heads of argument on 12

July 2024 and 19 July 2024 respectively.

Delivered: This judgment was handed down in open court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 17 October 2024.

Summary: Application for leave to appeal to the full court of the Free State Division of the High Court – Application based on findings of facts and/or the rulings of law of the Court a quo – Order amending the first and final liquidation and distribution account - Enforceability of claim for loss of *habitatio*.

ORDER

1. The Application for leave to appeal is granted to the Full Bench of this Division against the whole judgment granted on 17 May 2024.
2. Costs shall be costs in the appeal.

JUDGMENT

Chesiwe J

[1] The Applicant [who is the Second Respondent in the main application] applies for leave to appeal against paragraphs 34.2, 34.3, 34.4 and 34.5 of the judgment delivered on 17 May 2014, in terms of which it was ordered that:

- 1.1 The decision of the Master of the High Court [the first respondent in the main application] dated 12 May 2023 to uphold the applicant's [the second respondent in the main application] objections to the first respondent's [the applicant in the main application] claim for *habitatio*, as reflected in the first and final liquidation and distribution account dated 5 July 2022, is set aside in terms of section 35 of the Administration of Estates Act, no. 66 of 1965 (the Estates Act);
- 1.2 The applicant's objection to the first and final liquidation and distribution account are dismissed;
- 1.3 The Executor [the third respondent in the main application] is directed to amend the first and final liquidation and distribution account dated 5 July 2023 to include and reflect the first respondent's [the applicant in the main application] claim in respect of her right of *habitatio* in the amount of R1 113 481,50 as a claim for *habitatio* in terms

of clause 5.2 of the last will and testament of the late Leon Pieter Maree, read with clause 5 of the ante-nuptial contract, entered into between the late Leon Pieter Maree and the first respondent [the applicant in the main application] and registered on 27 November 1997 under number H1751/1997; and

1.4 The applicant [second respondent in the main application] is directed to pay the costs of the application.

[2] Grounds of Appeal are listed in the notice for application for leave to appeal and will therefore not be repeated herein.

[3] Section 17(1)(a) of the Superior Courts Act 10 of 2013 (the Superior Courts Act) provides that:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a)(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."

[4] Leave to appeal in terms of s 17(1)(a) of the Superior Courts Act should be granted only when there is sound, rational basis for the conclusion that there are prospects of success on appeal.¹

[5] Applicant contends that the First Respondent as the surviving wife has no claim for maintenance against the estate of her deceased spouse in terms of s 2 of the Maintenance of Surviving Spouses Act 27 of 1990 as the First Respondent had claimed R3 445 862, 75 from the estate and that the First Respondent's claim for loss of *habitat* was enforceable. Further that there exist reasonable prospects that another court would come to a different conclusion.

[6] The First Respondent contends that the Applicant's grounds of appeal do not constitute any reason for the court of appeal to interfere with the court order as

¹ *Four Wheel Drive Accessory Distributors CC v Rattan N.O 2019 (3) SA 451 (SCA), paragraph 34*

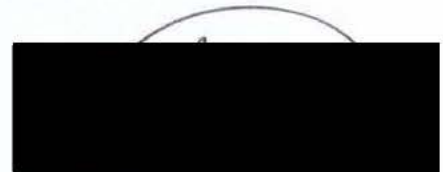
granted in its judgment and furthermore that there are no prospects of success that another court would come to a different conclusion.

[7] In an application for leave to appeal, the court is called upon to consider whether another court would consider all the facts of the applicable case and come to a different conclusion. This process calls upon the court to consider its own judgment and adjudicate such judgment from the perspective of the court of appeal. This invidious position of the judge, is a call to consider to grant or not to grant an appeal.²

[8] Having considered all the grounds of appeal as well as submission made on the written heads of argument as well as the judgment dated 17 May 2024, I am of the considered view that another court will come to a different conclusion.

[9] Consequently, the following order is made:

1. The application for leave to appeal is granted to the full bench of this Division.
2. Costs to be in the appeal.

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CHESAWE J

² (See *Rex v Baloi* 1949(1) SA 523 (AD) at 524 to 525)

Appearances

For the Applicant:

Instructed by:

Adv. R Van der Merwe

Honey Attorneys

Bloemfontein

For the First Respondents:

Instructed by:

Adv. C D Pienaar

Kühn and Associates

Bloemfontein