

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
DATE 21/11/2024	SIGNATURE.....

CASE NO: 7776/2024

In the matter between:

MAKHADO LOCAL MUNICIPALITY

Applicant

and

PAUL MAKHAVHU

First Respondent

PAULINE MAKHAVHU

Second Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

GAISA AJ

INTRODUCTION

[1] This is an application for leave to appeal against the judgment and orders delivered on 18 September 2024. The Applicant (Makhado Local Municipality) seeks leave to appeal to the full court, alternatively to the Supreme Court of Appeal.

LEGAL FRAMEWORK

[2] The test for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act 10 of 2013. As emphasized in *MEC for Health, Eastern Cape v Mkhitha and Another*,¹ leave to appeal must not be granted unless there truly is a reasonable prospect of success.

[3] An applicant must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case, or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.

¹ (1221 of 2015) [2016] ZASCA 176 (25 November 2016)

ANALYSIS

[4] At the outset, counsel is reminded that an application for leave to appeal must focus on the orders made rather than the judgment's reasoning or style of writing. This principle appears particularly relevant given counsel's extensive criticism of the judgment's reasoning rather than demonstrating why another court would reach a different conclusion on the actual orders granted.

[5] The question before this court is whether there are reasonable prospects that another court would (not merely might) come to a different conclusion regarding the orders granted.

[6] Having considered the grounds raised by the Applicant, particularly regarding orders 5 and 6 of the judgment which were not specifically prayed for in the notice of motion, I find that there may be reasonable prospects of success on appeal limited to these specific orders. These orders directed:

- 6.1 the review of account consolidation processes;
- 6.2 leave to approach the court on supplemented papers.

[7] While the other orders fell within the scope of the relief sought and were necessary to give effect to the main relief regarding electricity disconnection, orders 5 and 6 may have exceeded what was specifically prayed for in the notice of motion.

FINDING

[8] Applying the principle from Mkhitha that there must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal I find it prudent to:

- 8.1 grant leave to appeal on the limited grounds relating to orders 5 and 6;
- 8.2 maintain the other orders which were clearly within the scope of relief sought.

[9] This approach allows appellate scrutiny of whether these specific orders exceeded the court's powers while protecting the core relief granted to the applicants.

ORDER

1. Leave to appeal is granted to the Full Court of the Limpopo Division, limited to orders 5 and 6 of the judgement delivered on 18 September 2024.

2. The application for leave to appeal against the remaining orders is dismissed.
3. The cost of the appeal is to be cost in the cause, unless the applicant does not proceed with the appeal, in which case the cost is to be paid by the applicant.



N GAISA

Acting Judge

High Court of South Africa

Limpopo Division, Polokwane

APPEARANCES

FOR THE APPLICANT

: ADV. U B MAKUYA

INSTRUCTED BY

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FOR THE 1ST RESPONDENT

**: MR T MALULEKE (HEADS OF
ARGUMENT BY ADV. Z D MALULEKE)**

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DATE OF HEARING : 14 November 2024

DATE OF JUDGEMENT : 21 November 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 21 NOVEMBER 2024.

POLOKWANE HIGH COURT