

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 8122/2017

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

.....
.....

DATE.....

SIGNATURE

[Redacted Signature]

In the matter between:

MATOME CHARLES MALATJI

Applicant

And

THE CHAIRMAN: KGATLA COMMISSION

First Respondent

MOSIBUTJANE SHAYI

Second Respondent

**MEC: CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENTS AND TRADITIONAL AFFAIRS**

Third Respondent

THE PREMIER: LIMPOPO PROVINCE

Fourth Respondent

**THE COMMISSION ON TRADITIONAL
AFFAIRS, LEADERSHIP DISPUTES AND
CLAIMS: LIMPOPO**

Fifth Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is

deemed to be **01 April 2025**.

JUDGMENT

MAKOTI AJ

Introduction

[1] The applicant was unsuccessful in his review application. It was on two bases: first, on the basis that I found the commission to have engaged itself appropriately to the enquiry that lay before it when investigating his claim for chieftainship; and, second, on the applicability of the Promotion of Administrative Justice Act¹ (PAJA).

[2] He seek to overturn my judgment on both of the findings that I have foreshadowed above.

Principles for leave to appeal

[3] Leave to appeal is granted where the court reaches the conclusion that the application would have reasonable prospects of success.² This was the finding in *S v Smith*³ where the court had an opportunity to answer what constitutes reasonable prospects of success and it came to the conclusion that:

"What the test of reasonable prospects of success postulates is 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

¹ Act No. 3 of 2000.

² S 17(1) of the Superior Courts Act No. 10 of 2013.

³ 2012 (1) SACR 567 (SCA) 570 at para [7].

order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal." (Emphasis added)

[4] Court interpreted section 17(1)(a)(i) of the Superior Courts Act,⁴ and opined that leave to appeal may only be granted where a court is of the view that the appeal would have reasonable prospects of success. The have concluded that the phrase 'would have reasonable prospects of success' serves to indicate some degree of certainty that the court of appeal would reach a different conclusion on appeal.

[5] On this point the Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha and Another*⁵ held as follows:

"An applicant for leave to appeal 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."

[6] These principles are settled. There is no need to add anything more.

Consideration of the application

[7] The applicant makes two compelling points which I believe require a relook. The first is on the applicability of the Promotion of Administrative Justice Act to review the outcome of the Commission of Inquiry. I found, after considering a number of authorities, that PAJA is not the appropriate route. There are other cases which have been decided in terms of that statute. On

⁴ Act 10 of 2013.

⁵ [2016] ZASCA 176, para 17.

this point I find that the appeal bears reasonable prospects of success.

- [8] The second issue concerns the question whether the Commission conducted its investigations properly. I found that the Commission acted appropriately when conducting the investigations, which the applicant impugns. Here too, the issue is about historical data which the applicant contends was not properly considered by the Commission. Though the prospects of success on this aspect are slim, I would grant leave to appeal on this issue as well.

Order

- [9] I grant the following order:

- [a] Leave to appeal is granted to the full bench of the Limpopo Division of the High Court;
- [b] Costs are in the appeal.



MAKOTI MZ
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

DATE HEARD: 24 MARCH 2025

JUDGMENT DELIVERED: 02 APRIL 2025

APPEARANCES

FOR APPLICANT : ADV AC DIAMOND
HAMMAN MOOSA ATTORNEYS

C/O CHAYYA ATTORNEYS
POLOKWANE

FIRST RESPONDENT : **ADV NE GAISA**
OFFICE OF THE STATE ATTORNEYS
POLOKWANE

SECOND RESPONDENT : **ADV MD MOHLAMONYANE SC; with**
MH MPHABLELE
TC PILUSA ATTORNEYS
C/O MAKGOBA KGOMO MAKGALENG INC
POLOKWANE