



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

CASE NO: 6035/22

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO ☒ YES
- (2) OF INTEREST TO OTHER JUDGES: YES/NO ☒ YES
- (3) REVISED: YES/NO ☐ YES

17 October 2025

In the matter between: -

KGALEMA RICKY SEPONYE

Applicant

and

DEPARTMENT OF HOME AFFAIRS

First Respondent

THE DIRECTOR GENERAL: HOME AFFAIRS

Second Respondent

CAROLINE LEBEA

Third Respondent

OFFICE OF THE FAMILY ADVOCATE

Fourth Respondent

This judgment was handed down electronically by circulation to the parties' legal representatives via email and by uploading it to the electronic file of this matter on Caselines. The date of judgment is deemed to be 17 March 2025.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL AND CROSS APPEAL

MOGAGABE AJ

INTRODUCTION

[1] The applicant herein seeks leave to appeal only the costs order I made in terms of which I made no order as to costs, as per my judgment delivered on 25 October 2024, based on the grounds set out in the application for leave to appeal.¹ Leave to appeal is sought to the Full Court of this Division. The third respondent (Mrs Lebea) has filed an application to cross-appeal my judgment and order in terms of which I granted an order in favour of the applicant on the merits of the matter, and made the order foreshadowed in para 58 of the judgment. The application to cross-appeal is directed at my factual findings to the effect that a valid customary marriage was concluded between the applicant and the deceased, with specific reference to the evidentiary material presented

¹ CaseLines 0-71-1 to 0-71-10 application for leave to appeal.

by the applicant establishing the successful conclusion of lobola negotiations at the family home of the deceased, the lobola letter signed by emissaries of the Kgalema family and the father of the third respondent representing the deceased family (the Maboyane family) and the subsequent events that transpired at the Kgalema family home relating to *inter alia* the traditional handover of the deceased as the wife of the applicant and the ngwetsi/makoti (daughter-in-law) of the Kgalema family, the slaughtering of a goat symbolising the acceptance and welcoming of the deceased as the ngwetsi/makoti of the Kgalema family and introduction to the Kgalema ancestors, followed by the traditional marriage celebrations that ensued welcoming the new ngwetsi/makoti and her family by the Kgalema family. The main thrust of such application to cross-appeal is that due to the dispute of facts surrounding such important events, I ought to have referred the matter for the hearing of oral evidence to resolve such dispute of facts.

- [2] Applications for leave to appeal are regulated by s 17(1) of the Superior Courts Act 10 of 2013 (the Act). In terms of s 17(1)(a) of the Act, an application for leave to appeal will only be granted, when the Judge or Judges concerned is/are of the opinion that the appeal would have a reasonable prospect of success or there exists some other compelling reason(s) why the appeal should be heard by an appellate court.² This entails that in terms of s17(1)(a) the test in

² As per s17(1)(a)(i) and (ii) of the Act, regulating applications for leave to appeal; **Mont Cheveaux Trust v Goosen** 2014 JDR 2325 (LCC) para 6; **MEC for Health, Eastern Cape v Mkhitha** [2016] ZASCA 176 para 17; **State v Smith** 2012 (10 SA CR 597 (SCA) para 7; **Fusion Properties 233 CC v Stellenbosch Municipality** [2021] ZASCA 10 (29 January 2021) para [18].

determining a reasonable prospect 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 from that of the court *a quo*.³ In other words, leave to appeal should be granted only where an applicant has demonstrated and the court is convinced that a sound and rational basis exists for the conclusion that there are prospects of success on appeal.⁴

[3] The provisions of s 16(2)(a)(i) of the Act stipulate that an appeal may be dismissed, if at the hearing thereof, the issues are of such a nature that the decision sought will have no practical effect or result, whereas s 16(2)(a)(ii) provides that, save under exceptional circumstances, the question as to whether the decision would have any practical effect or result, is to be determined without reference to any consideration as to costs. In **Tebeila**⁵, the Constitutional Court held that the practical impact of s 16(2)(a) is that “appeals on costs alone are allowed very rarely indeed”. At the risk of repetition, the applicant’s appeal is directed solely at the issue of costs.

[4] It is settled law that the fact that the order on the merits is not attacked or challenged, does not preclude the determination of an appeal against a costs order alone. In cases where the only issue on appeal is the costs order, leave to appeal is only granted in the “rarest of cases”. This was confirmed by the

³ **Ramakatsa v African National Congress** [2021] ZASCA (31 March 2021) para [10].

⁴ **Secona Freight Logistics CC v Samie & Others** [2023] 183 (22 December 2023) para [28].

⁵ See fn 6 below.

Constitutional Court in **Tebeila** to the effect that “*few appellate courts countenance appeals on costs alone.*”⁶

[5] It is trite that a court is endowed with a wide discretion in determining an award of costs. It is also trite that in granting a costs order a lower court exercises a true discretion, which exists where a lower court has a number of equally permissible options available to it, and that interference by an appellate court will only be warranted on the basis of exceptional circumstances as outlined in para 6 below. An appeal court should be slow to substitute its own decision simply because it does not agree with the permissible option chosen by a lower court.⁷

[6] In cases where the sole issue in the appeal is the award of costs, as is in casu, leave to appeal will only be granted where an applicant can demonstrate or establish “exceptional circumstances”. In other words, a court will not grant an application for leave to appeal against an award of costs only, provided the applicant satisfies the court that “exceptional circumstances” exist warranting interference by an appeal court with the exercise of the lower court’s discretion in this regard. In the absence of such exceptional circumstances, the appeal will be devoid of any reasonable prospects of success, entailing that the application

⁶ *Tebeila Institute Leadership, Education, Governance and Training v Limpopo College of Nursing* 2015 (4) BCLR 396 (CC) para 13.

⁷ *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) paras [144] – [145]; *Florence v Govt of the RSA* 2014 (6) SA 456 (CC) para 13; *Zuma v Office of the Public Protector and Others* [2020] ZASCA 138 (30 October 2020) paras [19]- [20]

for leave to appeal falls to be dismissed.⁸ This is a formidable hurdle that the applicant in casu will have to overcome to be granted leave to appeal herein. In this regard, I note that the applicant's counsel neither in his heads of argument nor during the hearing hereof, never addressed, referred to or alluded to this requirement of exceptional circumstances.

[7] I have given due and proper consideration to all the arguments and submissions made by the applicant's counsel. However, I remain unpersuaded that the issues raised by the applicant show or demonstrate that exceptional circumstances exist or that an appeal court would find that exceptional circumstances exist, warranting interference with the costs order I made. Absent such exceptional circumstances, the applicant's appeal would not have any reasonable prospect of success.

[8] Furthermore, the applicant's counsel submitted that as the third respondent misled the court in resisting this application, such conduct warranted a punitive costs order against her. This submission is misplaced if not devoid of any merit simply because, I made no such finding on the part of the third respondent, nor could counsel point out such finding in the judgment. In any event, the fact that I found that the third respondent acted in a misguided but bona belief that she was protecting the interest of her deceased daughter and grandchildren, in

⁸ *Mukanda v South African Legal Practice Council* 2021 (4) SA 292 (GP) para [9].

opposing this application, does not per se constitute a ground to mulct her with costs, let alone a punitive costs order.

[9] As such, the applicant's application for leave to appeal the award of costs only falls to be dismissed.

[10] Same applies to the argument and submissions made by the third respondent's counsel, regarding the application to cross-appeal only my factual findings that the applicant has established or proved the conclusion or existence of a valid customary marriage between himself and the deceased, on the basis of the evidentiary material outlined in para 1 above and as per my factual findings foreshadowed in paras 42 to 46 of my judgment, which facts and events on a balance of probabilities established or proved that a valid customary marriage existed or was concluded between the applicant and the deceased, in fulfillment or compliance with the requirements prescribed in s 3(1) of the Customary Marriages Act. The nub of the third respondent's argument in this regard is that based on the bare and general denials by her of such facts and events, there existed a factual dispute on such material issues, entailing that I should have referred the matter to the hearing of oral evidence for resolution.

[11] In developing this argument, counsel for the third respondent contended that *"is rather it asking for too much to expect her to delve too deep into allegations of the ceremony, celebrations and/or handover of the deceased... when the lobola negotiations did not happen. It is asking her to deal with that which does not*

exist and punish her for not dealing with that which does not exist.” Such assertions do not constitute or establish any dispute of fact and are in the circumstances, misconceived, ill-founded and devoid of any substance for the reasons outlined in the judgment and the following reasons.

[12] First, besides such submissions being incomprehensible, the approach of a court in dealing with bare, general or ambiguous denials by a litigant when faced with serious material facts and evidence, is set out by the Supreme Court of Appeal in the case of **Wightman** as outlined in para 41 of my judgment. It is not about asking a litigant to “delve too deep” into such material facts and circumstances. Second, no authority was advanced by her counsel overruling the **Wightman** line of cases on this score, as referenced in footnote 16 of my judgment.

[13] Third, it is not about *“punishing her for not dealing with that which does not exist”*. It is about what the law requires and expects from a litigant in motion proceedings in grappling seriously with material factual allegations. This is so, in that the third respondent has failed to produce material evidence, factual, documentary or otherwise, refuting inter alia, the successful conclusion of lobola negotiations for the marriage of her deceased daughter; the payment of lobola in the sum of R25000.00; the signing by her father of the lobola letter, constituting material documentary evidence corroborating the successful conclusion of the lobola negotiations at the Maboyane family home on the day in question and the traditional handover of the deceased as the wife of the

applicant and ngwetsi/makoti of the Kgalema family and being given a name by the Kgalema family, in accordance with African customs and traditions and in particular of the Bapedi people.

[14] Fourth, and more importantly, her failure to produce evidence refuting that her father was not only present during such lobola negotiations but was also the emissary and signatory of the lobola letter on behalf of the Maboyane family. Unsurprisingly, no confirmatory affidavit by her father to this effect was filed. At the risk of repetition bare, general and ambiguous denials do not in law constitute a dispute of facts.

[15] Accordingly, I am of the considered view that there exists no reasonable prospect of success or other compelling reasons, why the third respondent should be granted leave to appeal. Overall, the third respondent has failed to show that there exists a sound and rational basis for the conclusion that there are prospects of success on appeal.⁹

⁹ See *Secona Freight Logistics* supra fn 4.

ORDER

[16] In the result, the following order is made:

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

16.2. The application to cross-appeal is also dismissed with costs on Scale B.


S J R MOGAGABE

Acting Judge of the High Court

Gauteng Division

Pretoria

APPEARANCES:

Counsel for the applicant: Adv Ntjana

Instructed by LMK Attorneys, Pretoria

Counsel for the third respondent: Adv A Maluleka

Instructed by Savage Joose & Adams Inc, Pretoria

Date of Judgment: 17 March 2025