IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

CASE NO: 1870/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: ~~NO~~ yes
(3) REVISED: YES

[redacted].... 28/07/2025

SIGNATURE DATE

In the matter between:

THEMBA TIBANE	**FIRST APPLICANT**
MADODA ISAAC TJIE	**SECOND APPLICANT**
NOMSA MUHLAWURI MANYIKE	**THIRD APPLICANT**
LISBON DEVELOPMENTS (PTY) LTD	**FOURTH APPLICANT**
MAGIC BREAKAWAYS (PTY) LTD	**FIFTH APPLICANT**
LEGACY GROUP HOLDINGS (PTY) LTD	**SIXTH APPLICANT**

MINISTER OF LAND REFORM AND DEVELOPMENT	**SEVENTH APPLICANT**
THE MASTER OF THE HIGH COURT: PRETORIA	**EIGHTH APPLICANT**

and

INGRID MHLONGO	**FIRST RESPONDENT**
JAMES KHUMALO	**SECOND RESPONDENT**
THUTHANE ADOLPH TJIA	**THIRD RESPONDENT**
MAJIANE EVELINE MKHANSI	**FOURTH RESPONDENT**
SAMSON MHLONGO	**FIFTH RESPONDENT**
FRANK MHLONGO	**SIXTH RESPONDENT**

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 28 July 2025 at 10:00.

JUDGMENT

Mashile J

Introduction

[1] On 28 February 2025, this Court handed down judgment granting orders in favour of the Respondents among which were the following:

1.1 Refusing to place the Nhlangwini Trust ("the Trust") under administration;

1.2 Appointing Ms Nazreen Sekao Pando ("Ms Pando") as an administrator of the Trust;

1.3 Directing the First to Third Applicants ("the Former Trustees") to fully cooperate with the administrator in good faith and to provide her, on demand, with any property, documents, records and information belonging to or concerning the Nhlangwini Trust in their possession;

1.4 Postponing Part "B" *sine die* until –

1.4.1 The administrator has filed her first report;

1.4.2 Lisbon Developments and the Former Trustees Respondents have supplemented their papers, or advised the parties that they do not intend to do so, within thirty days of the first written report; and

1.4.3 All further pleadings are exchanged.

[2] Aggrieved by the aforesaid order, the First to Third Applicants ("the Former Trustees and the Third to Sixth Applicants ("Lisbon Developments") launched this leave to appeal application against the whole judgment and order of this Court. Where context demands, I will refer to the parties that I have collectively named Lisbon Developments in their individual names. The Seventh and Eighth Applicants, as in the main case, have been cited to the extent that they may have an interest in the outcome and no relief is sought against them. For that reason, I may, or not, refer to them throughout this judgment. The application is opposed by all the Respondents.

Grounds of Appeal

[3] The judgment is challenged on several grounds. One of these is that while the order may be interim in nature, which is not admitted, it is nonetheless final in effect and therefore appealable. Furthermore, and in any event, the appealability of interim orders

is no longer determined based on the *Zweni v Minister of Law and Order* ("*Zweni*")[1] case alone. The overarching test now preferred by the Constitutional Court is one of the interests of justice.

[4] The second ground is that the Court failed to apply the Plascon-Evans rule when assessing the evidence. The court accepted the facts as stated by the Applicants in the main case without any reference to those stated by the Respondents in the main case, which the Applicants could not deny or which the Court could not reject out of hand as being farfetched.

[5] The third ground is that I have granted a relief that is unknown in law. As I understand, Lisbon Developments and the Former Trustees' argument is that a trust does not have an independent existence and neither does it have legal personality. For it to be functional, therefore, there must always be Trustees. The trust deed and the Trust Property Control Act 57 of 1988 ("TPCA") regulate the way Trustees are appointed. The community or beneficiaries, through procedures laid down in a trust deed, nominate or appoint the Trustees. The Master of the High Court must, in terms of the TPCA, endorse the appointment or nomination before a Trustee can execute his functions as a Trustee.

[6] A court cannot usurp the power exclusively meant to be exercised by the Master of the High Court and appoint Trustees or an administrator as it has done here. Accordingly, prospects exist that another court would conclude that the appointment of Ms Pando as the administrator is incompetent. The appointment of Ms Pando is not recognised by both the common law and our Constitution.

[7] The fourth ground is that this Court incorrectly relied on LAWSA to justify the appointment of Ms Pando. The paragraph on which the Court depended provides that the Court has the power and even the duty to appoint Trustees to prevent the trust from failing. The Court is said to have done something that is legally untenable, especially by refusing to place the Trust under administration while at the same time appointing

[1] *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A); [1993] 1 All SA 365 (A).

Ms Pando. The paragraph from LAWSA does not support what transpired. Trustees are nominated or appointed in terms of a trust deed and the Master of the High Court authorises the appointment in terms of the TPCA. To the extent that the Court in this matter appointed an administrator, it acted outside of its powers.

[8] The fifth ground is stated as an erroneous reliance on the case of *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* ("*Mwelase*")[2] to justify the appointment of Ms Pando. The Constitutional Court in *Mwelase* dealt with the powers of Courts to craft remedies under sections 172 and 173 of the Constitution in circumstances where the Department of Rural Development and Land Reform consistently failed to process land claims. Confronted with that persistent failure by the Department, the Constitutional Court, so goes the argument, directed that a special master be appointed as an officer of the Court to supervise compliance with Court orders and ensure institutional accountability within the executive.

[9] Thus, the background concerning the circumstances under which the special master in the *Mwelase* case was appointed is immensely different. The appointment of the special master in the *Mwelase* case was not governed by a trust deed or the TPCA. For that reason, the Former Trustees and Lisbon Developments conclude that prospects exist that another Court would overturn the appointment of Ms Pando.

Legal Framework

[10] The leave to appeal is brought based on section 17(1) of the Superior Courts Act 10 of 2013. The section 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

[2] *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* 2019 (6) SA 597 (CC).

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

[11] In the matter of *Ramakatsa and Others v African National Congress and Another*,[3] the Supreme Court of Appeal stated that:

> "[10] Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. ... I am mindful of the decisions at high court level debating whether the use of the word '*would*' as opposed to '*could*' possibly means that the threshold for granting the appeal has been raised. If a *reasonable prospect of success* is established, leave to appeal should be granted. ... The test of *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 to that of the trial court*. In other words, the appellants in this matter need to convince 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." (Emphasis added.)

[12] I have cited the paragraph above because the debate whether the advent of the Superior Courts Act has brought with it the raising of the threshold in leave to appeal applications is still raging notwithstanding the decision in *Ramakatsa supra*. The Supreme Court of Appeal in that case does not endorse the view expressed in earlier decisions that the bar for granting leave to appeal has been elevated. The test is still the old one – the reasonable prospects of success must not be remote, and a sound, rational basis for the conclusion that they exist must be shown.

[13] The standard has therefore not been raised. The Former Trustees and Lisbon Developments must establish the existence of a reasonable prospect of success if this

[3] *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

Court is to grant them leave to appeal. It is always worth bearing in mind that the issue is not whether the judgment is wrong, but it is whether another court would reach a different conclusion. Accordingly, the question is, have the Former Trustees and Lisbon Developments successfully shown the aforesaid or have they demonstrated that there is some other compelling reason why leave to appeal should be granted?

Analysis

Appealability

[14] Beginning with the issue of the appealability of the case. The parties are at variance on the issue. The Respondents believe that *Zweni*[4] remains critical in the determination of appealability. That said, they accept that the interests of justice may, under appropriate circumstances and facts, become the sole factor on which to decide the issue. The approach of the Former Trustees and Lisbon Developments is more ambivalent, in my opinion. On the one hand, they do not seem to disagree completely with the Respondents on the *Zweni* case, yet on the other, with reference to case law, they seek to demonstrate that the interests of justice have become the paramount test for appealability.

[15] The *Zweni* case has set out three qualities that characterise an appealable judgment. These are as follows:

15.1 It must be final in effect and not susceptible to alteration by the court of first instance;

15.2 It must be definitive of the rights of the parties, i.e. it must grant definite and distinct relief; and

15.3 It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

---

[4] *Zweni* fn 1 above at 532I-533B.

[16] I agree with the parties that *Zweni* is not necessarily the only or ultimate test of appealability. The correct position, as I see it, is that it all depends on the facts of each case. If a party can persuade a Court that circumstances in a matter are such that the interests of justice demand that it be appealable, then a Court should, following a positive finding on the existence of such facts, look beyond the three attributes described in *Zweni*. This is how I read the development since *Zweni* in 1992 and the cases thereafter to date mentioned by the Former Trustees and Lisbon Developments.

[17] Where a court concludes that the interests of justice do not require the application of the test, then *Zweni* remains relevant. One of the last of those cases is the matter of *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others*,[5] where the Court stated that the interests of justice are not simply a fallback position meaning of course that the requirements in *Zweni* will still apply where the interests of justice do not feature.

[18] From the preceding paragraph, it is apparent that the next question is to ask whether the Former Trustees have shown that the interests of justice are such that the matter should be appealable. While the Former Trustees and Lisbon have said that such circumstances exist, they stopped short of furnishing them to this Court and I shall not guess what they are. Contrary to what they believe, however, it is manifest that the Trust is in a state that can only be described as chaotic. The Trustees who were in office prior to the Former Trustees would seem to have helped themselves to the Government grant made shortly after the establishment of the Trust.

[19] The disappearance of the Government grant, however, should have been or should still be a matter for criminal police investigation and therefore not part of these proceedings. Large sums of the money paid by Lisbon Developments disappeared during the office of the Former Trustees and to date no one can fully account for it. Again, it will be improper for this Court to concern itself with the criminal police investigation regarding

[5] *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* 2023 (5) SA 163 (SCA).

the disappearance of such funds. Given this situation of the Trust and the fact that its formation was to facilitate ownership of the 'restituted' land of the Community, is it in the interests of justice that it should remain without any leadership? Who is this chaos serving? Certainly not the Community.

[20] Accordingly, insofar as the interests of justice are concerned, I cannot find that they exist against a backdrop of a mismanaged trust whose trust deed has been disrespected almost since inception. The Trust had become dysfunctional, the Master had confessed to having failed to rescue it and the Former Trustees illegally remained in office even though their term had come to an end. The Former Trustees were still in office between 21 December 2020 until 20 July 2023, during which the bank statements show that Lisbon Developments paid about R15 000 000 to the Trust. The Former Trustees dissipated the amount with R1 423 000 paid to Mr Tibane, R3 380 000 paid to Mr Mculu and R340 000 to Mr Tibane's friend.

[21] The Former Trustees also made a total cash withdrawal of R5.2 million. Notwithstanding the former Trustees' term of office having terminated on 19 January 2022, they continued to operate the trust thereafter and 780 bank transactions were made to the value of approximately R7.5 million. In these circumstances, it was reasonable to intervene to protect the interests of the beneficiaries. If anything, the situation that I have described above militates against the interests of justice being used to justify appealability. In short, *Zweni* should be the applicable test in these circumstances. The three attributes mentioned in *Zweni* therefore become relevant and require scrutiny.

[22] The first of the three attributes is that the order must be final in effect and not susceptible to alteration by the court of first instance. I am staggered by the allegation of the Former Trustees and Lisbon Developments that I placed the Trust under administration and appointed Ms Pando as administrator. This is totally incorrect because I refused to place the Trust under administration but appointed Ms Pando as the administrator. It is on that ground that they conclude that: "Once such administration has

occurred, it cannot be undone or reversed". Accordingly, it is respectfully submitted, the order is final in effect and appealable.

[23] The appointment of Ms Pando as an administrator is interim, it being irrelevant whether she is referred to as an administrator or interim administrator, because Part "B", which is still to be heard, seeks her appointment as the sole Trustee. Part "B" will only be triggered upon Ms Pando furnishing her first report. That part, therefore, can still be changed by the court of the first instance, thus making the order not appealable.

[24] The second attribute is that the order must be definitive of the rights of the parties. In other words, it must grant definite and distinct relief. A definite and distinct relief is still to be considered under Part "B". It is manifest that Part "A" is pending the outcome of Part "B". Any attempt to interpret the order differently must be rejected.

[25] The last of the three attributes is that the order must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. This, the court has not done. The order is not appealable as such. This should be the end of the road for the Former Trustees, but it is advisable to proceed to consider the other grounds challenging the order.

Relief Unknown in Law Granted

[26] The condemnation that this Court has granted a relief that is unknown in law rings hollow, especially in circumstances where it is not the first to have done so under similar situations. The criticism levelled at the Court does not, it would seem, consider that prior to the TPCA, Trusts and their operations were governed by the common law. When the TPCA was introduced, the purpose was never to oust the common law because the preamble of the TPCA is explicit on the matter – "To regulate further the control of trust property; and to provide for matters connected therewith". By using the word "further", the Legislature makes it apparent that there is another system of law that is in existence and that the TPCA adds to it.

[27] It is thus not uncommon that Courts have, in appropriate circumstances such as the current, appointed interim administrators or Trustees. These circumstances include situations where Trustees mismanage the financial affairs of a Trust or fail to account to the community for which the Trust has been established to exercise control over their property or properties. Thus, in the unreported case of *Makhubela and Others v Thembinkosi N.O. and Others*,[6] Tuchten J, in circumstances where there was mismanagement of a Trust, suspended Trustees and appointed an interim administrator to run the affairs of the Trust pending the hearing of Part "B" of the application. It is worth noting that the attempt to appeal the decision failed before the Supreme Court of Appeal. To grant leave to appeal would be an unnecessary burden to the Full Court of this Division or the Supreme Court of Appeal.

Incorrect Reliance on Paragraph 212 of LAWSA

[28] This Court has been criticised for its reliance on Volume 43, Paragraph 212 of LAWSA. Perhaps I should reiterate that in circumstances where a Trust is sure to fail as a result of the inaction or action of Trustees or where there are no Trustees, as is the case in *casu*, a Court is, at common law, at liberty to save such Trust by taking such measures as may be appropriate to rescue it from total failure to safeguard the rights of the beneficiaries. This Court did exactly what the authors in LAWSA have set out in Volume 43, paragraph 212 of LAWSA. As such, I am at a loss as to why the bold statement of the Former Trustees and Lisbon Developments that the court was wrong to rely on it was made. They furnish no reasons why the paragraph is incorrect.

Incorrect Reliance on the Mwelase Decision

[29] The argument of the Former Trustees and Lisbon Developments is that the Constitutional Court in the *Mwelase* case was concerned with the crafting of a remedy in terms of section 172 in a situation where there were consistent constitutional failures to

[6] *Makhubela and Others v Thembinkosi N.O. and Others* [2022] ZAGPPHC 470.

deal with land claims. Furthermore, the matter was not considered in the context of a trust deed and the TPCA. Therefore, it was incorrect of this Court to make the extensive reference to the matter. The reference to the *Mwelase* case was deliberate and this Court still maintains that it was appropriately used. I have already stated that this Court derived the power to appoint Ms Pando from common law. The Mwelase case demonstrates that in appropriate circumstances Courts should not be deterred to intervene to save trusts to protect the interest of its beneficiaries or communities, it being neither here nor there that the Constitutional Court in the Mwelase matter did so against the backdrop of Section 172 of the Constitution of the Republic. I cannot emphasise it more than I have already.

Failure to Apply the Plascon-Evans Rule

[30] The Former Trustees and Lisbon Developments could not gainsay the fact that Lisbon Developments paid funds to the Trust. The amounts that the Former Trustees paid to various parties, including Mr Tibane, his friend and Mr Mculu were not disputed at all. Furthermore, no explanation was proffered for the large cash withdrawals made by the Former Trustees. An argument that seeks to state that the Trustees who were in office prior to the Former Trustees also mismanaged or stole funds paid to the Trust is rejected as immaterial in these proceedings. The basis for that is that those Trustees are not parties to this application. In any event and to the extent that the Former Trustees were legitimately appointed in terms of the trust deed and subsequently endorsed by the Master of the High Court in terms of the TPCA, suggests that the Trust was still salvageable from the instabilities that characterised it.

[31] The fact that this Court may not have applied the Plascon-Evans rule will not change the mismanagement of the Trust and that it remains without Trustees. The appointment of Ms Pando was under those circumstances justified and prospects that another Court would reach a different conclusion are remote.

Usurpation of the Powers of the Master

[32] A further ground is that this Court has essentially usurped the functions of the Master of the High Court by appointing Ms Pando. The Respondents had previously

alerted the Master of the Court to the dysfunctionality of the Trust. The Master took no action and when these proceedings were initiated, he specifically stated that he would abide by the decision of the Court. I do not think it would have served any purpose to pause this matter so that he could attend to the problems experienced by the Trust. Especially in circumstances where the Court possessed the power and jurisdiction and could achieve the same objective as it was seized with the matter already.

Locus Standi of the Former Trustees and Lisbon Developments

[33] The Former Trustees have admitted that their term of office came to an end a long time ago. That being so and without any allegation that they were beneficiaries when the application for the appointment of Ms Pando was launched, leaves them without *locus standi*. Their interference in this application was gratuitous. Lisbon developments had been aware that the Former Trustees no longer had any interest in the matter because their term of office had expired. Besides, Lisbon itself was aware that the Respondents had always sought relief against the Former Trustees and not them. Additionally, it has always been plain that the Respondents had cited them for such interest that they might have in this matter and that the Respondents were not seeking any relief against them. As such, it has always been apparent to Lisbon Developments that it would not suffer any prejudice such that they needed to oppose the relief.

[34] For the above reasons, Lisbon Developments had no strong reasons to be part of these proceedings. Their presence in this matter served only to burden this Court with unnecessary lengthy documents that could have been avoided. This Court is entitled to

show its displeasure by ordering costs against the Former Trustees and Lisbon Developments at an appropriate scale.

[35] For the reasons above, the leave to appeal fails and I make the following order:

1. Leave to appeal is refused.

2. The Former Trustees and Lisbon Developments are directed to pay the costs of the Respondents, jointly and severally, at Scale C of party and party;

3. The costs above shall include those of two Counsel.

[redacted]

B A MASHILE

JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

Appearances

Counsel for the Applicants:	Adv T Strydom SC
	Adv JP Slabbert
Instructed by:	Richard Spoor Inc
	C/O Christo Smith Inc
Counsel for the Respondents:	Adv A Bishop SC
	Adv S Mathe
	Adv N Tarmohamed
Instructed by:	Mculu Inc Attorneys for 1st to 3rd Respondents
	C/O Yuanitha Du Plessis Attorneys
	Strauss Scher Attorneys for 4th to 6th Respondents
Date of Judgment:	28 July 2025