



THE HIGH COURT OF SOUTH AFRICA, NORTHERN CAPE DIVISION, KIMBERLEY
JUDGMENT

Not Reportable

Case No: 2321/2016

In the matter between:

RB

APPLICANT

and

ES

FIRST RESPONDENT

Neutral citation: *RB v ES* (2321/2016) (29 July 2025)

Heard: 28 July 2025

Delivered: 01 August 2025.

Summary: **Law of Civil Procedure** – Leave to appeal – failure to demonstrate reasonable prospects of success – the application for leave to appeal dismissed with costs.

ORDER

Application for the leave to appeal:

1. The application for leave to appeal is dismissed with costs such costs to include the fees of senior-junior counsel on scale B in terms of rule 67A of the Uniform Rules of Court.
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JUDGMENT

Phatshoane DJP:

[1] This is an application for leave to appeal against the whole of the judgment and order of this Court dated 29 November 2024 in terms of which the final award of Mr André Heyns, dated 30 July 2021, in respect of the determination of the accrual in the applicant's and respondent's respective estate was made an order of this Court; the applicant, Mr RB, was ordered to pay R3 311 897.00 to the respondent, Ms ES, being her accrual claim against the applicant in terms of Chapter 1 of the Matrimonial Property Act 88 of 1984; the applicant's counter-application was dismissed. Further ancillary relief in respect of costs was granted in both the applications.

[2] It is not necessary to set out the grounds of appeal in any great detail. The applicant referred to a few distinguishable judgments which he contended I erred in not applying.¹ In the main, it was contended for the applicant that s 12 of the Trust Property Control Act 57 of 1988 (TPCA) provides that: 'Trust property shall not form part of the personal estate of the trustees except in so far as they as the trust beneficiaries are entitled to the trust property.' Therefore, in the absence of any evidence on the abuse of

¹ They referred to, inter alia, *Schierhout v Minister of Justice* 1926 AD 99; *Buffalo City Metropolitan Municipality v Asia Construction (Pty) Ltd* 2019 (4) SA 331 (CC).

the trust form by the applicant, the inclusion of the trust assets in his estate for the purposes of the calculation of the accrual during the marriage, was unlawful.

[3] It was further argued for the applicant that the issue of the trust's assets and their inclusion was not part of the *lis* between the parties; that the parties concluded the settlement agreement under a common material error of law and beyond their powers as the trustees. To the extent that the deed of settlement provided in clauses 2.1 and 2.2.9 that the trust's assets be considered part of the applicant's assets for the purposes of determining the accrual, it was argued, it was unlawful in that it offended against s 12 of TCPA and clauses 5.1.1.1, 5.1.1.2 and 7.7.1 of the trust deed which prohibits trustees from merging any of the assets of the trust with their own or holding out that any trust assets belong to them personally or appropriating any of the trust capital or income for their own benefit.

[3] The grounds of the application for leave merely rehearses the arguments that this Court has already considered and rejected based on good authority relevant to the issues. Little purpose would be served to repeat the reasoning in the main judgment. In terms of s 17(1)(a) of the Superior Courts Act 10 of 2013:

'Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

- (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] Having carefully considered the argument, I am of the view that there are no reasonable prospects of success, including any compelling reason to entertain the appeal such as important questions of law or discreet issues of public importance which would have a bearing or effect on future disputes. It follows that the application must be dismissed with costs.

[5] In the result:

Order

The application for leave to appeal is dismissed with costs such costs to include the fees of senior-junior counsel on scale B in terms of rule 67A of the Uniform Rules of Court.



M V PHATSHOANE
DEPUTY JUDGE PRESIDENT

Appearances

For the applicant:	A Eillert
Instructed by:	Adrian B Horwitz & Associates, Kimberley
For the respondent:	AS Sieberhagen
Instructed by:	PGMO Attorneys, Kimberley.