

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 11014/2022

REPORTABLE: NO
OF INTEREST TO THE JUDGES: YES/NO
REVISED.

DATE 21/8/2025

SIGNATURE...

In the matter between:

MABULANYANE NEMIA MAGOLEGO N.O
SELETANE PHILEMON MOKOBAKA N.O
MADIETE EUNICE MOROTA N.O
LETSEPE JOYCE SELOANE N.O
MPHELA MAMASELE DINA N.O
CHIDI JOHN MASHILO N.O

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant
Sixth Applicant

and

MAGOLEGO KGOLA KLAAS	First Respondent
MASHILO MAKWESHE LUCAS	Second Respondent
MAGOLEGO MAPONYA EDWARD	Third Respondent
MAGOLEGO BOKGOBELO ELLIOT	Fourth Respondent
MAGOLEGO MOSHIANE JULIA	Fifth Respondent
MAGOLEGO DONALD HLANUDI	Sixth Respondent
MAGOLEGO SERVICE MOTUBATSE	Seventh Respondent
MADUANE MOTLALECHEGO SHARDRACK	Eighth Respondent
MOROTA MATSHEHLE SHARDRACK	Ninth Respondent
MOROTA TEBADI HENDRICK	Tenth Respondent
MOROTA MABORE JOHANNA	Eleventh Respondent

In re:

In the matter between:

MAGOLEGO KGOLA KLAAS	First Applicant
MASHILO MAKWESHE LUCAS	Second Applicant
MAGOLEGO MAPONYA EDWARD	Third Applicant
MAGOLEGO BOKGOBELO ELLIOT	Fourth Applicant
MAGOLEGO MOSHIANE JULIA	Fifth Applicant
MAGOLEGO DONALD HLANUDI	Sixth Applicant
MAGOLEGO SERVICE MOTUBATSE	Seventh Applicant
MADUANE MOTLALECHEGO SHARDRACK	Eighth Applicant
MOROTA MATSHEHLE SHARDRACK	Ninth Applicant
MOROTA TEBADI HENDRICK	Tenth Applicant
MOROTA MABORE JOHANNA	Eleventh Applicant

and

MMIDI WILLIAM MAGOLEGO N.O	First Respondent
CHIDI JOHN MASHILO N.O	Second Respondent
SELETANE PHILEMON MOKOBAKA N.O	Third Respondent
LEHWELELE GEOFFREY MAGOLEGO N.O	Fourth Respondent
MADIETE EUNICE MOROTA N.O	Fifth Respondent
LETSEPE JOYCE SELOANE N.O	Sixth Respondent
MPHELA MAMASELE DINA N.O	Seventh Respondent
HAMANE RALPH LEKGEU N.O	Eighth Respondent
MABULANYANE NEMIA MAGOLEGO N.O	Ninth Respondent
MASTER OF THE HIGH COURT	Tenth Respondent

JUDGEMENT

GAISA AJ

INTRODUCTION

[1] This is an application for leave to appeal against my judgment delivered on 26 July 2024, wherein I dismissed the applicants' Rule 30 applications seeking to set aside Rule 7(1) notices. The applicants, who are trustees of the Ditamaga Trust, now seek leave to appeal to either the Full Court or the Supreme Court of Appeal.

THE TEST FOR LEAVE TO APPEAL

[2] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the judge is of the opinion that:

- 2.1. the appeal would have a reasonable prospect of success; or
- 2.2. there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[3] The test requires more than a mere possibility of success. As emphasized in *MEC Health, Eastern Cape v Mkhitha (1221/15) [2016] ZASCA 176 (25 November 2016)*, there must be a sound, rational basis to conclude that there is a reasonable prospect that another court would come to a different conclusion. An arguable case or one that is not hopeless is insufficient. The SCA held that:

“[17] 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.”

GROUND OF APPEAL RAISED & CONSIDERED**[4] Alleged Failure to Decide on Irregularity:**

The applicants contend I failed to decide whether the Rule 7(1) notices were irregular before dismissing their application. This is patently incorrect. In paragraphs [8] and [9] of my judgment, I expressly found that the notices were valid and would stand. The finding was clear and unambiguous.

[5] Lateness of Notices:

The applicants argue the notices were filed late without proper condonation. I addressed this comprehensively in my judgment, finding that the brief delay of four days caused no prejudice and that it was in the interests of justice to condone the late filing. The applicants have shown no error in this exercise of judicial discretion.

[6] Costs Order:

The applicants challenge the personal costs order made against them. It is significant that when given the opportunity to address the court on the issue of costs and how such costs should be allocated, the applicants elected not

to participate in that exercise. This silence speaks volumes about their approach to these proceedings.

[7] A particularly concerning aspect of this matter is that six out of nine trustees have instituted these Rule 30 applications and are opposing the main application as well as the security for costs application. The authority of these trustees to act in their capacity as trustees has been fundamentally disputed. The applicants appear to labour under the misconception that merely being cited as trustees automatically entitles them to litigate on behalf of the trust, irrespective of whether they have obtained the necessary authority in terms of the trust deed.

[8] It would be manifestly unjust and unreasonable for the beneficiaries of the trust to suffer financial prejudice because trustees are acting outside the scope of their authorization. The evidence strongly suggests that the applicants are litigating in their personal capacities rather than on the authority of the trust in accordance with the trust instrument. Given their failure to demonstrate proper authorization, their knowledge as trustees of their fiduciary duties, and their failure to show any prejudice from the alleged irregularities, the personal costs order was both appropriate and within the court's discretion. To allow trust assets to be depleted for unauthorized litigation would be contrary to the interests of justice and the protection of beneficiaries.

The Real Issue

[9] What emerges clearly from this matter is that the applicants, as trustees, are employing technical procedural objections to avoid their fundamental fiduciary duty to account to the beneficiaries of the trust. As stated in *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278F-G:

"Technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and if possible inexpensive decision of cases on their real merits."

[10] The applicants have not demonstrated that they are duly authorized in terms of the trust deed to oppose the main application or institute proceedings for security for costs. Instead of providing this straightforward documentation, they persist with technical challenges that serve only to delay the inevitable - they must account to the beneficiaries.

[11] **No Reasonable Prospect of Success:**

The applicants have failed to show that another court would likely reach a different conclusion on any of the grounds raised. My findings were based on established legal principles correctly applied to the facts. The Rule 7(1)

notices properly challenged the trustees' authority to act on behalf of the trust
- a legitimate inquiry given their fiduciary obligations.

[12] **No Compelling Reason:**

There is no compelling reason why this appeal should be heard. The matter does not raise any novel or complex legal principles. It is simply a case of trustees attempting to avoid accountability through procedural technicalities that do not advance the interests of the very beneficiaries they are meant to serve.

INTERESTS OF JUSTICE

[13] The interests of justice do not favour granting leave to appeal. The beneficiaries of the Ditamaga Trust have a right to transparency and accountability from their trustees. Granting leave would only serve to further delay the resolution of the substantive issues and enable the trustees to continue avoiding their fiduciary duties.

[14] Whether the applicants eventually succeed on petition to the Supreme Court of Appeal or not, the fact remains that they must account to the beneficiaries. This is

not a technical requirement but a fundamental aspect of trust law. Why delay the inevitable by granting leave to appeal?

CONCLUSION

[15] The applicants have not satisfied me that there is a reasonable prospect that another court would come to a different conclusion. Their grounds of appeal are without merit and appear designed to frustrate the legitimate demands of the beneficiaries for accountability.

[16] The application reveals a concerning pattern of trustees using procedural manoeuvres to avoid their fundamental duties. This does not serve the interests of justice or the beneficiaries they are meant to protect.

ORDER

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

17.1. The application for leave to appeal is **dismissed**.

17.2. The applicants are ordered to pay the costs of this application on a party-to-party scale, such costs to be paid by them jointly and

severally in their personal capacities, the one paying the others to be absolved.

17.3. The applicants are prohibited from using trust assets to satisfy this costs order.

A black rectangular box redacting a signature, with a thin, hand-drawn line looping around the top and left sides of the box.

N GAISA

**ACTING JUDGE OF THE HIGH COURT,
POLOKWANE, LIMPOPO DIVISION**

DATE HEARD: 6 June 2025

DATE DELIVERED: 21 August 2025

APPEARANCES

For the Applicants (Respondents in the main application): Adv. Mokwena

INSTRUCTED BY: Gilbert Motedi Attorneys Inc.

c/o Matotola Tseleng Attorneys

5 Bekker Street, Polokwane

For the Respondents (Applicants in the main application): Adv. Green

INSTRUCTED BY:

DDKK Attorneys

19 Watermelon Street Polokwane

POLOKWANE HIGH COURT