



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 5154/2023

In the matter between

**VARIOUS INDIVIDUAL UNLAWFUL OCCUPIERS
AND INTENDED UNLAWFUL OCCUPIERS OF THE
REMAINING EXTENT OF FICKSBURG DORP GRONDE
75, (COMMONLY KNOWN AS PEACH FARM &
IMPERANI MOUNTAIN IN FICKSBURG)
BOIKETLONG FORUM FICKSBURG
PAPALI RITTAH SESELINYANE
MASUTUTSA LIPHOTO
SHIFT CONSULTING
HOUSING DEVELOPMENT AGENCY
DEPARTMENT OF AGRICULTURAL &
RURAL DEVELOPMENT, FREE STATE
and
SETSOTO LOCAL MUNICIPALITY**

**FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT
FOURTH APPLICANT
FIFTH APPLICANT
SIXTH APPLICANT

SEVENTH APPLICANT

RESPONDENT**

In re:

In the application of:

**SETSOTO LOCAL MUNICIPALITY
and**

APPLICANT

**VARIOUS INDIVIDUAL UNLAWFUL OCCUPIERS
AND INTENDED UNLAWFUL OCCUPIERS OF THE**

REMAINING EXTENT OF FICKSBURG DORP GRONDE

75, (COMMONLY KNOWN AS PEACH FARM & IMPERANI MOUNTAIN IN FICKSBURG)

BOIKETLONG FORUM FICKSBURG

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HOUSING DEVELOPMENT AGENCY

DEPARTMENT OF AGRICULTURAL &

RURAL DEVELOPMENT, FREE STATE

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

Neutral citation: *Various Individual Unlawful Occupiers and Intended Unlawful Occupiers of the Remaining Extent of Ficksburg Dorp Gronde 75, (commonly known as Peach Farm & Imperani Mountain in Ficksburg) and Others v Setsoto Local Municipality* (5154/2023) [2025] ZAFSHC 239 (15 August 2025)

Coram: Parks AJ

Heard: In chambers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 15 August 2025

Summary: Application for leave to appeal – section 17(1) of the Superior Courts Act 10 of 2013 – no reasonable prospects of success.

ORDER

- 1 The condonation application is granted.
 - 2 The leave to appeal is dismissed with costs.
-

JUDGEMENT: LEAVE TO APPEAL

[1] This is an opposed application for leave to appeal in respect of my judgment delivered on 19 September 2024. The leave to appeal application was filed on 22 October 2024. I was, at the time, no longer in an acting capacity in the Free State Division and was handed the file upon my return in the 3rd term of 2025. Accordingly, the application was considered in chambers and on the papers only, including the written heads of argument.

[2] The applicant, in addition, filed a condonation application for the late filing of their application for leave to appeal, which according to their calculations, is one day late and not opposed by the respondent. I do not agree with the calculation because the judgement was not delivered on 30 September 2024 as alluded to by the applicants. Be that as it may, I do not see the need to delve into the condonation application and deem it prudent to consider the application for leave to appeal.

[3] The applicants based their application for leave to appeal on the following grounds in that I have erred and misdirected myself in:

- (a) Dismissing their point *in limine* pertaining to the s 4(2) notice and that there was no meaningful engagement between parties before resorting to eviction proceedings.
- (b) Failing to rescind the court order and grant a cost order in their favour upon the rescission of the cost order granted on 25 January 2024.
- (c) Dismissing the respondent's application to strike out the 'new and replacing replying affidavit' dated 10 April 2024.
- (d) Failing to establish exceptional circumstances that render the filing of additional affidavits fair.
- (e) Failing to take into account all relevant circumstances when I ruled that it's just and equitable and in the interest of justice to order the eviction.

[4] It is trite that s 17(1)(a) of the Superior Courts Act 10 of 2013 (Superior Courts Act) which came into operation 23 August 2013 regulates the application of leave to appeal and reads as follows: '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

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

[5] In *Smith v S*,¹ the Supreme Court of Appeal (the SCA) stated:

' . . . In 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.'

[6] In *Ramakatsa and others v African National Congress and Another*,² the Supreme Court Appeal (the SCA) commented that:

'The test of reasonable prospects 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.'

[7] I have dealt with all the grounds enumerated in the application for leave to appeal in my judgment and do not intend to repeat my reasoning, but for ease of reference will highlight in which paragraphs they were dealt with.

[8] In respect of the first ground, which relates to the points *in limine* raised, I have dealt with this aspect in paragraph 43, the subsequent subparagraphs and paragraph 44.

[9] The second ground was dealt with in paragraph 36, up to and including, paragraph 39 which resulted in my ruling to rescind the cost order granted on 25 January 2024.

¹ *Smith v S* [2011] ZASCA 15;2012 (1) SACR 567 (SCA) para 7.

² *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

[10] Grounds three and four were dealt with in paragraph 40 and paragraph 41 respectively.

[11] The last ground was quite extensively dealt with in paragraphs 45-54 of my judgment and the reasoning why I am of the view that the eviction is just and equitable and in the interests of justice.

[12] The following facts are common cause:

- (a) The applicants have occupied a piece of land belonging to the respondent, which was leased to another without any authority to do so;
- (b) They have not applied for housing at the respondent's housing developing agency;
- (c) They occupied an area that is not conducive to human habitation due to no infrastructure and occupied area for less than six months;
- (d) They were not homeless but rather chose to move away from their families.

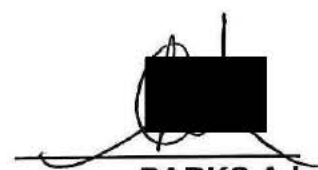
[13] I do not agree with the applicant's argument that another court may reasonably come to a different conclusion because it's totally wrong. The test is whether another court would come to a different decision with reference to the judgement of the SCA as highlighted above.

[14] I am of the view that the bar has been raised with the insertion of the word 'would' in s 17 of the Supreme Courts Act, and the applicant should do a bit more than repeat the facts and argue that another court may reasonably come to a different conclusion.

[15] Consequently, I find that the applicants have failed to demonstrate reasonable prospects of success and have failed to provide any other compelling reason why leave to appeal should be granted.

[16] I accordingly make the following order:

- 1 The condonation application is granted.
- 2 The application for leave to appeal is dismissed with costs.



PARKS AJ

Heads of argument prepared by

For the applicants: M J Merabe

Instructed by: Salakuva Attorneys, Bloemfontein

For the respondent: M J Ponoane

Instructed by: Ponoane Attorneys, Bloemfontein.