



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

Not Reportable

Case no: 1220/2023

In the matter between:

RENÉ VAN HEERDEN NO

FIRST APPLICANT

CHRISTIAAN WAGENAAR NO

SECOND APPLICANT

STEPHANUS PHILLIPUS VAN HEERDEN NO

THIRD APPLICANT

(In their capacity as trustees of the René Boerdery Trust,
IT1551/01)

and

ALBERTUS WYNAND PRETORIUS NO

FIRST RESPONDENT

PETRUS JOHANNES JOUBERT NO

SECOND RESPONDENT

(In their capacity as trustees of the Pretorius Familie Trust
IT1551/97)

Neutral citation: *R van Heerden NO and Others v AW Pretorius NO and Others*
(1220/2023) [2025] ZAFSHC 299 (17 September 2025)

Coram: Van Zyl J

Heard: 12 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand down is deemed to be 11h00 on 17 September 2025.

Summary: Application for leave to appeal granted.

ORDER

1 Leave is granted to the applicants to appeal to the full court of the Free State Division of the High Court against the whole of the judgment and orders of Majosi, AJ, dated 10 June 2025.

2 The costs of the application for leave to appeal are costs in the appeal, with counsel's fees to be taxed on scale B.

JUDGMENT

Van Zyl J

[1] This is an application for leave to appeal against the whole of the judgment and order of Majosi AJ (as she then was), delivered on 10 June 2025.

[2] This application was allocated to me on the basis of the provisions of Section 17(2)(a) of the Superior Court's Act, 10 of 2013 ('the Act'), in terms whereof an application for leave to appeal may be heard by any other judge of the Division when the judge against whose decision the appeal is to be made is not readily available. Majosi's acting stint had been concluded at the time of the hearing of this application.

[3] The applicants in this application were the plaintiffs in the action in the court *a quo* and the respondents were the defendants in the said action.

[4] On the trial date, the respondents and their legal representatives were in default and it was directed that the matter proceed on the merits in terms of Rule 39(1) of the Uniform Rules of Court. The court *a quo* also granted leave to the applicants to lead expert evidence by way of affidavit in terms of Uniform Rule 38.

General principles applicable to applications for leave to appeal:

[5] In terms of Section 17(1)(a) of the Act leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard.

[6] In *Acting National Director of Public Prosecutions v Democratic Alliance In Re Democratic Alliance v Acting National Director of Public Prosecutions* (19577/09) [2016]

ZAGPPHZ 489 (24 June 2016), the court held (at para 25 of the judgment) that the Act has raised the bar for granting leave to appeal and in this regard it referred to the judgment of *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others* 2014 JDR 2325 (LCC), where the following was stated:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

See also *Rohde v S* 2020 (1) SACR 329 (SCA) para 8 and *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another* (21688/2020) [2020] ZAGPPHC 311 (24 July 2020) para 4.

[7] In *Municipality of Thabazimbi v Badenhorst* (66933/2011) [2024] ZAGPPHC 195 (26 February 2024) at paras 9 – 11 the court also dealt with the more stringent test for an application for leave to appeal and held, *inter alia*, as follows:

'[9] ... A possibility and discretion were therefore, in the words of the legislation and consciously so, amended to a mandatory obligatory requirement that leave may not be granted if there is no reasonable prospect that the appeal will succeed. It must be a reasonable prospect of success; not that another Court may hold another view.

[10] The Court *a quo* may not allow for one party to be unnecessarily put through the trauma and costs and delay of an appeal. ...

[11] In *MEC Health, Eastern Cape v Mkhitha* (1221/2015) [2016] ZASCA 176 (25 November 2016) the Supreme Court of Appeal held: " ... [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.*"

The basis on which leave to appeal is being sought

[8] The applicants have filed a comprehensive application for leave to appeal which they set out three main grounds of appeal.

[9] In the heads of argument of Mr Van der Merwe filed in the application for leave to appeal, he eloquently summarized the applicants' three main grounds of appeal to be the following:

'11.1 The first ground relates to the fact that the Court *a quo* had misconstrued the pleadings on which evidence was led.

11.1.1 The applicant trust deals in detail with the ground upon which it alleges the court *a quo* erred in paragraphs 1 to 1.8 of the application for leave to appeal and it is submitted that a proper case has been made out that leave to appeal be granted in respect of the first ground of appeal.

11.2 The second and third ground of appeal relate to the applicant trust's claim which is contained in the applicant's amended particulars of claim as 'claim two' and 'claim three', both of which were dismissed by the Court *a quo*;

11.2.1 The applicant contends that the Court *a quo* dismissed this claim based on findings which did not form part of the pleadings and in respect of which the respondents did not lead any evidence. These findings were made in conflict with the principles set out in *Jowell v Bramwell-Jones supra*.

11.2.2 The applicant trust deals in detail with the ground upon which it alleges the Court *a quo* erred in paragraphs 2 to 2.9 and 3 to 3.9 of the application for leave to appeal and it is submitted that a proper case has been made out that leave to appeal be granted in respect of the second and third ground of appeal.

12. At paragraph 4.2 to 4.5 of the applicant trust's application for leave to appeal, the applicant trust refers to a number of judgments which illustrates that the Court *a quo* erred in respect of the Court *a quo*'s application of a trite legal principle regarding the enquiry as to factual causation and the onus of establishing causation.'

Conclusion

[10] I have read the record of the proceedings in the court *a quo*, considered the pleadings, the notice of application for leave to appeal and the arguments presented by Mr van der Merwe.

[11] After due consideration of the aforesaid, I am of the opinion that the appeal would have reasonable prospect of success on the basis as set out in the application for leave to appeal.

[12] The applicants are seeking leave to appeal to the full court of this Division of the High Court and that the costs of the application be costs in the appeal. I deem same the appropriate order to be made in the circumstances.

Order

[13] The following order is made:

- 1 Leave is granted to the applicants to appeal to the full court of the Free State Division of the High Court against the whole of the judgment and orders of Majosi, AJ, dated 10 June 2025.
- 2 The costs of the application for leave to appeal are costs in the appeal, with counsel's fees to be taxed on scale B.



C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the applicants:

R van der Merwe

Instructed by:

Phatshoane Henney Inc, Bloemfontein.