

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 5703/2024

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: NO</u>
(3)	<u>REVISED.</u>
	
	
DATE: 01 October 2025	
SIGNATURE: 	

In the matter between:

LEDWABA LESIBA JACK

APPLICANT

(Registration Number: 1984/080048/06)

and

KONANANI KHOHOMELA

1ST RESPONDANT

ALL OTHER UNLAWFUL OCCUPIERS HOLDING.

2ND RESPONDENT

OCCUPATION AGAINST THE FIRST RESPONDENT

THULAMELA LOCAL MUNICIPALITY

3RD RESPONDENT

JUDGEMENT

MOGALE-MAKINTA, AJ

INTRODUCTION

1. This is an opposed application for leave to appeal judgment and order of this court dated 20 June 2024.
2. The matter was brought in terms of Rule 6(12) of the Uniform Rules of Court, and the court made a finding that the matter was urgent and that an applicant would not be afforded substantial redress in due course.
3. The court considered the matter and dismissed the application with costs.
4. *The* application for leave to appeal was filed on 03 July 2024. This application is brought in terms of section 17(1)(a) and (ii), of the Superior Court Act 10 of 2013, to wit, that the appeal would have a reasonable prospect of success and/ or there are some compelling reasons why the appeal should be heard.
5. The applicant raised a preliminary issue as ground for appeal, specifically asserting that the court committed errors in fact and /or law in the following:
 - 5.1. The court a quo did not apply its discretion judicially.

5.2. The court erred in considering the first respondent's arguments on the question of law from the bar without service of a notice in terms of Rule 6(5)(d)(iii).

5.3. The court erred in finding that the applicant's relief sought in the notice of motion is not competent in law and therefore not enforceable.

6. The applicant further argued that there is a reasonable likelihood that the appeal court will find that the court a quo erred in its finding as follows:

6.1. That the court a quo misdirected itself to facts on the case as the Elections Tribunal did not hold the elections, and that the outcome of the objection was not supposed to have been communicated by the fourth respondent, but the assigned officials to the elections in terms of regulation 14(2).

6.2. The appeal court may find that the court a quo misdirected itself to the facts of the case, as alluded to in paragraph 10 of the judgment. In contrast, the application had nothing to do with unlawful occupation and/ or eviction.

7. The respondent opposed the application in the sense that the applicant filed a comprehensive notice to oppose and participate in the matter, including factual and legal disputes; therefore, the respondent did not only raise questions of law as contemplated in Rule 6(5)(d)(iii).

8. The respondent contends that the court was correct in finding that the relief sought was premature, incompetent, and not enforceable; the application for review could not be entertained.

9. The applicant's failure to bring a proper interim interdict pending a review, and instead seeking wide-ranging relief, undermines their own case.

10. The erroneous insertion of paragraph 10 in the judgment does not affect the conclusion reached by the court.

11. The applicant cited the matter of *Minister of Water and Environment Affairs and Kloof Conservation*¹, where reference was made to the case of *Rail Commuters Action Group & Others v Transnet Ltd t/a Metrorail & Others*² which held that "it is quite clear that before it makes a declaratory order a court must consider all the relevant circumstances. A declaratory order is a flexible remedy which can assist in clarifying legal and constitutional obligations in a manner which promotes the protection and enforcement of our Constitution and its values. Declaratory order, of course, may be accompanied by other forms of relief, such as mandatory or prohibitory orders, but they may also stand on their own. In considering whether it is desirable to order mandatory or prohibitory relief in addition to the declaratory, a court will consider all the relevant circumstances"

12. The application for leave to appeal is regulated by s 17(1)(a) (i) and (ii) of the Act, which states 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

¹ 106/2025 [2015] ZASCA 177 (27 November 2015) at para 23

² 2005(2) SA 359 (CC) para 107-108

(ii) There are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

13. It is apparent that our courts have consistently applied the test on whether leave to appeal should be granted or not. The liberal approach to granting leave by courts is discouraged as inconsistent with s17 of the Act. For instance, in *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*³, the Supreme Court of Appeal stated as follows regarding the trial court's liberal approach to granting leave to appeal.

"It is important to mention my dissatisfaction with the court a quo's granting of leave to appeal to this court. The test is whether there are any reasonable prospects of success."

14. During this application, I considered the submissions presented by both counsels, their arguments' primary points, and the rationale in the court judgment, which constitutes the main contention of the application. I am persuaded that an appeal would have reasonable prospects of success. Therefore, I believe that leave to appeal should be granted.

As a result, the following order is made:

- a. The applicant is granted leave to appeal to the full bench of the Limpopo Division of the High Court, Polokwane.
- b. The costs of the application for leave to appeal will be costs in the appeal.

³ 9213/160 [2017] ZASCA 17 (22 MARCH 2017)


[REDACTED]
MOGALE-MAKINTA
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

Electronically submitted.

Delivered: This judgment was prepared and authored by the judges whose names are reflected and handed down electronically by circulation to the parties/their legal representatives by email. The date for hand-down is deemed to be 01 October 2025

DATE OF HEARING : 29 September 2025

DATE OF JUDGMENT : 01 October 2025

APPEARANCES

FOR THE APPLICANT : Mr Moitse

INSTRUCTED BY : Moitse and Associates INC

FOR THE DEFENDANT : Advocate Nyathi

INSTRUCTED BY : Moabelo Attorneys

DATE OF HEARING : 29 September 2025

DATE OF JUDGMENT : 30 September 2025

POLOKWANE HIGH COURT