



**THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case No: LCC28/2020

Before: Du Plessis AJ

Heard on: 12 September 2025

Delivered on: 16 September 2025

- (1) REPORTABLE: Yes ☒ / No ☐
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Date: 16 September 2025

Signature: ~~du plessis~~

In the matter between:

NOTHEMBA MKUTUKA

First Applicant

NOMTSHA MKUTUKA

Second Applicant

and

THE MINISTER OF LAND AFFAIRS

First Respondent

ZITHEMBILE MKUTUKA

Second Respondent

THE LAND CLAIMS COMMISSION

Third Respondent

**MRS PONA, LAND CLAIMS
COMMISSIONER**

Fourth Respondent

ORDER

1. The application for leave to appeal by the applicants is dismissed.
 2. There is no order as to costs in the leave proceedings.
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JUDGMENT: LEAVE TO APPEAL

DU PLESSIS AJ

Introduction

[1] This is an application for leave to appeal against my judgment of 21 July 2025. In that judgment, I dismissed the applicants' review application. I remitted the matter to the Regional Land Claims Commissioner ("the Commissioner") for determination in terms of the Restitution of Land Rights Act 22 of 1994.

Mr Mbebe

[2] I deal first with the application by Mr Balekile France Mbebe. Mr Mbebe was not cited as a party to these proceedings. He is neither an applicant nor a respondent. The order of 21 July 2025 made no finding against him and imposed no obligation upon him. His name appeared in the judgment only in the course of recording the history of the matter and his irregular involvement, for the relevant authorities to investigate. No definite finding was made. It is a settled principle that an appeal lies against the order of a court, not against its reasons. Because no order was made against Mr Mbebe, there is nothing for him to appeal.¹

The Applicants

[3] I then turn to the application by the applicants. Section 17(1) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the appeal would have a reasonable prospect of success, or if there are some other

¹ *Elan Boulevard (Pty) Ltd v Fryn Investments (Pty) Ltd* 2019 (3) SA 441 (SCA) at 448A.

compelling reasons why the appeal should be heard. The word “would” requires a measure of certainty, and not just a mere possibility.² Furthermore, compelling reasons require cogent and convincing arguments, not vague assertions.³ Appeals are about obtaining a different result, not simply receiving a second opinion.

[4] The applicants’ central grievance is that I held that the correspondence of 25 June 2019, and subsequent related correspondence, did not constitute a “decision” susceptible to review under the Promotion of Administrative Justice Act.⁴ What they seek to appeal is the dismissal of that finding.

[5] The applicants relied on *Bhugwan v JSE Limited*⁵ for the argument that the court erred in finding that the letter(s) did not constitute a “decision”. In that case, the court stated⁶ that for conduct to qualify as a reviewable “decision” under PAJA, certain elements should generally be present. In summary, these elements are a final application or request addressed to the authority; the gathering of all relevant information that must be placed before the authority; an evaluative process in which that information is weighed against the statutory framework; a conclusion as to how the power should be exercised; and the actual exercise of the power based on the conclusion. Whether these steps have occurred is a matter of degree, turning on whether the decisional process is sufficiently complete to be ripe for review. The test, as Baxter notes and is quoted in the judgment, is whether prejudice has already resulted or is inevitable. Where unlawfulness is manifest and cannot be corrected by further process, immediate review may follow. But absent finality and prejudice, correspondence that reflects only a provisional stance does not cross the threshold into “decision.”

[6] It is so that the letter of 7 October 2019 uses the word “decision,” but what matters is substance, not labels. That letter expressly recorded that the verification process was ongoing; that Zithembile Mkutuka had stated that Jeremia was his father;

² *MEC for Health, Eastern Cape v Mkhitha* [2016] ZASCA 176.

³ *Talhado Fishing Enterprises (Pty) Ltd v Firstrand Bank Ltd t/a First National Bank* [2023] ZAECQBHC 16.

⁴ 3 of 2000.

⁵ [2009] ZAGPJHC 33.

⁶ Para 10.

and that if the applicants disputed this, they should provide proof to the contrary. Far from being final, it invited further engagement. It did not direct payment, nor did it conclude the matter. It confirmed that the Commissioner's mind remained open.

[7] On a *Bhugwan* analysis, the letter expressly recorded that verification was ongoing, noted Zithembile's claim of descent, and invited the applicants to provide proof to the contrary. It did not direct payment or finally determine rights; instead, it kept the process open for further information. Much like in *Bhugwan*, the decisional process was incomplete, provisional in tone, and without direct external legal effect. Nor had prejudice yet arisen: the applicants' position had not been altered in a way that was irreversible or incapable of later correction.

[8] On this finding, there are no reasonable prospects that another court would come to a different conclusion.

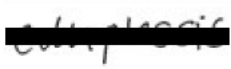
[9] The applicants have argued, in general terms, that it is in the interests of justice for the appeal to be heard. They offered no convincing motivation for why this is so. I cannot see how it would be in the interests of justice to permit an appeal on an issue that is not yet ripe. Once the Commissioner makes a final determination, the applicants will have the opportunity, if they are aggrieved, to challenge it in review proceedings.

[10] At present, the applicants are merely dragging out the inevitable. Continued recourse to premature litigation risks delay and prejudice to the other parties.

Order

[11] Accordingly, the following order is made:

1. The application for leave to appeal by the applicants is dismissed.
2. There is no order as to costs in the leave proceedings.



WJ du Plessis
Acting Judge of the Land Court

Date of hearing:	12 September 2025
Date of judgment:	16 September 2025
For the applicant:	SR Mhlawuli, attorney with right of appearance in the High Court
For the respondent:	PV Msiwa SC instructed by MT Mlola Attorneys Inc