



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no: 2023-062156

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
30 SEPTEMBER 2025	
.....	
DATE	SIGNATURE

In the matter between:

PALABORA MINING COMPANY

First Applicant

PALABORA PENSION FUND

Second Applicant

SANLAM LIFE INSURANCE LTD

Third Applicant

AND

CHAIISA MACHIPI

First Respondent

CALIPHONIA MACHIPI

Second Respondent

JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)

- [1] The second applicant, Palabora Pension Fund, hereinafter referred to as ('the Fund') and the third applicant, Sanlam Life Insurance Ltd, hereinafter referred to as ('Sanlam') seek leave to appeal to the Full Court, alternatively, the Supreme Court of Appeal against the whole judgment and the order of this court delivered on 6 February 2025, declaring that the nomination member beneficiary form nominating the respondents (who were applicants in the court a quo), signed by the deceased is an instruction to make payments to them as Section 37C was not applicable to that portion of death benefits as they emanate from a life insurance policy not governed by the Pension Funds Act¹ (the Act). The first applicant has never participated in the proceedings and is not in this application. The leave to appeal application is opposed.
- [2] Since the relevant issues were addressed in the judgment, this court sees no need to set out the full grounds for leave to appeal. The Fund and Sanlam appear to base their applications for leave to appeal on the same grounds.
- [3] The grounds for leave to appeal have been set out in the applicants' notice of leave to appeal application and reiterated in their respective heads of argument and their joint practice note as applicants. There are submissions and contentions regarding how this court misdirected itself on the legal framework related to the provisions of Section 37C of the Act, the rules of the Fund, and the Annexures to the Fund rules. The grounds of the Fund and Sanlam will be considered together for the purposes of this judgment.
- [4] In summation, the following are the grounds of the bout on the judgment by the Fund and Sanlam, in that the court erred by:
- [4.1] Failing to properly apply the provisions of section 37C of the Act regarding the payment of death benefits. Thereby finding that section 37C found no application. As the total death benefit payable by the Fund

¹ Act 24 of 1956.

- consists of two components, namely the insured component, which the Fund has insured with Sanlam, and the deceased member's fund credit.
- [4.2] Not recognising that Sanlam has already paid the Fund according to the policy, which provides that the insured component of the death benefit is payable by Sanlam to the Fund, and that once payment is made to the Fund, Sanlam is absolved from any further liability.
- [4.3] Relying on Xaba² and Pieterse³ judgments as they are distinguishable.
- [4.4] Finding that the nomination form completed by the deceased was binding on the Fund and on Sanlam.
- [5] On behalf of the Fund and Sanlam, it was submitted that there are reasonable prospects that another court would come to a different finding. Reliance was placed, among others, on the matter of Mostert NO v Old Mutual Life Assurance Co (SA) Ltd (2)(083/2001) ZASCA 104[2001] 4 All SA 250(A), where the distinction between the approved Fund and the policy of insurance was drawn and discussed.
- [6] The court was also referred to other authorities, including Xaba and Pieterse, *supra*. In *Xaba*, the Full Court found that the benefits payable in terms of the pension fund are regulated by the Act, whereas the benefits payable in terms of the Group Life Insurance Policy are determined by the conditions of the applicable law. In *Pieterse*, the Supreme Court of Appeal held that in the ordinary course, the proceeds of an insurance policy will go directly to a nominated beneficiary. It does not form part of the deceased's estate like other proceeds.
- [7] It was argued on behalf of the applicants that an appeal would have reasonable prospects of success as contemplated in section 17(1)(a)(i) of the Superior Courts Act.⁴ Further, there is a compelling reason to grant leave to appeal as contemplated by section 17(1)(a)(ii) of the Superior Courts Act, since the

² Xaba and Others v Xaba NO and Others (A279/2013) [2014] ZAGPPHC 812 (15 October 2014).

³ Pieters v Shrosbree No & Others V Love & Others [2006] 3 All SA 343 (SCA).

⁴ Act 10 of 2013.

pension and insurance industries' experts have concerns regarding the judgment, and have raised same in different forums, including newspapers.

- [8] The respondent filed no cross-appeal. It opposed the application and argued in favour of the judgment.
- [9] In *MEC for Health, Eastern Cape v Mkhitha and Another*⁵, the Supreme Court of Appeal, held that: *"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."*
- [10] Regarding the compelling circumstances as envisaged by Section 17(1)(a)(ii) of the Superior Courts Act, it was submitted that it was in the interest of justice that leave be granted, as there is an outcry in both the pension and insurance industries and the decision is bound to develop the law by giving clarity regarding the matter.
- [11] In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁶ (Caratco), it was held: *"A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here, too, the merits remain vitally important and are often decisive."*
- [12] Applying the tests in *Mkhitha* and *Caratco*, *supra*, respectively, and assessing the merits of the applicants' case, including their grounds of appeal, the court could not find any ground or compelling factors necessitating the hearing of the applicants' appeal, respectively.

⁵ (1221/2015)(2016) ZASCA 176 (25 November 2016).

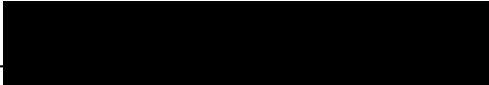
⁶ 2020 (5) SA 35 (SCA) para [2].

[13] In my respectful view, the court correctly applied the law to the facts and granted an order in accordance with its finding as discussed in the judgment. Consequently, the applications for leave to appeal cannot succeed.

[14] For these reasons, the following order is made;

Order:

The application for leave to appeal is dismissed with costs.



N. Mazibuko

Acting Judge of the High Court of South Africa
Gauteng, Pretoria

This judgment is digitally submitted by uploading it onto Caselines and emailing it to the parties.

Representation:

Counsel for the second applicant: Advocate K Magan
Instructed by: Johan Mort Incorporated

Counsel for second applicant: Advocate L Acker
Instructed by: Werksmans Attorneys

Counsel for respondent: Advocate KG Masutha
Instructed by: Ramokolo Attorneys

Date of hearing: 19 September 2025
Judgment delivered on: 30 September 2025