

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2025-013976

DATE: 31 October 2025

In the matter between:

NTSIKELELO KWEZI N O

First Applicant

BULELWA JEANIE MKANGISA N O

Second Applicant

SIBUSISO PETER-PAUL NGWENYA N O

Third Applicant

and

ODWA BONGILE KUPISO

Respondent

Neutral Citation: *Kwezi N O and Others v Kupiso (2025-013976) [2025]*

ZAGPJHC --- (31 October 2025)

Coram: Adams J

Heard on: 30 October 2025 – ‘virtually’ as a videoconference on *Microsoft Teams*.

Delivered: 31 October 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 31 October 2025.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold –

Leave to appeal granted to the Full Court –

ORDER

- (1) The respondent's application for leave to appeal succeeds.
 - (2) The respondent is granted leave to appeal to the Full Court of this Division.
 - (3) The costs of this application for leave to appeal shall be costs in the appeal.
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JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original Urgent Application by the applicants for *inter alia* an order that the respondent be declared to have been in contempt of an order of this court dated 19 November 2024. The respondent is the applicant in this application for leave to appeal and the first to third respondents herein were the applicants in the urgent application. On 17 February 2025 I granted the applicants' application and held that the respondent was in contempt of the aforesaid order. I also granted a costs order in favour of the applicants against the respondent.

[2]. The respondent applies for leave to appeal the whole of my judgment and the aforesaid order of 17 February 2025, as well as the reasons therefor. And the application for leave to appeal is based on the provisions of sub-section (i), as well as sub-section (ii), of section 17(1)(a) of the Superior Courts Act 10 of 2013, which reads as follows: -

'17 Leave to appeal

- (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

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

[3]. The application for leave to appeal is against my factual and legal findings that the applicants have satisfied the requirements to find contempt of court on the part of the respondent. I erred, so the respondent contends, in finding that communications supposedly from an entity by the name of Masintinge Investments CC, were in fact from the respondent. I should have drawn a distinction between the respondent, as a natural person, and Masintinge Investments CC. This would have resulted in a finding, so the contention is concluded, that the respondent was not the one who made himself guilty of the conduct which clearly offended the 19 November 2024 order.

[4]. The respondent also contends that I erred in finding that the application was urgent. Moreover, the respondent submits that the contempt order was in respect of a court order (dated 19 November 2024), which itself was unclear and left room for uncertainty. The court *a quo* and its judgment, so the respondent contends, failed to provide clarity as to which of impugned letters were contemptuous. Further anomalies and contradictions in the judgment are alleged by the respondent in his application for leave to appeal.

[5]. Importantly, it is submitted on behalf of the respondent that I misdirected myself in inferring wilfulness and *mala fides* on the part of the respondent. I erred in fact and in law, so the contention continues, in my finding that the respondent had disguised his unlawful contemptuous actions as those of Masintinge Investments and not his own actions.

[6]. Nothing new has been raised by the respondent in this application for leave to appeal. In my original written judgment, I have dealt with most, if not all of the issues raised by the respondent in this application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate what I say in the judgment, namely that factually the respondent has wilfully and *mala fide* breached the court order, underpinned by an undertaking he gave to the

applicants, in that he initiated and instigated processes which are detrimental to the Trust. Moreover, the undisputed fact of the matter is that the respondent divulged and used information – again to the detriment of the Trust – which information he had obtained during his term as a trustee of the Trust and as a director of the investee companies of the Trust

[7]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that 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’.

[8]. In *Ramakatsa and Others v African National Congress and Another*¹, the SCA held 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. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[9]. The ratio in *Ramakatsa* simply followed *S v Smith* 2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. 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

¹ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

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.'

[10]. In *Mont Chevaux Trust v Tina Goosen*², the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*³. In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Court Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁴.

[11]. I am persuaded that the issues raised by the respondent in his application for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. I am therefore of the view that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does have a reasonable prospect of success.

[12]. Leave to appeal should therefore be granted.

[13]. There is one last issue which I believe I need to deal with and that relates to a legal point *in limine* which was raised on behalf of the respondent at the

² *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

³ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

⁴ *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

hearing of the application for leave to appeal. The legal point relates to Uniform Rule of Court 7(1), the respondent alleging that the first to the third respondents are at present not empowered to instruct, in their capacities as Trustees for the time being of a Trust, the legal representatives of the Trust. The applicants were suspended by an order of this court dated 22 April 2025.

[14]. That interim order provides in the relevant part as follows: -

‘Insofar as may be necessary, the first, second and third [applicants] powers of trusteeship are hereby suspended forthwith and with immediate effect, with the first, second, and third [applicants] being interdicted and restrained forthwith from taking any steps to encumber, alienate, and/or dispose assets of the Peaker trust assets (including the assets of fifth respondent and the sixth respondent) and from taking any administrative action in any way whatsoever, including but not limited to the calling of trustees meetings and the taking of any steps in the furtherance of terminating the Peaker trust, and they are directed to return their letters of executorship;’

[15]. In view of this suspension order, the respondent contends that the applicants’ legal representatives lack the necessary authority to continue acting herein on behalf of the applicants. The application for leave to appeal should therefore be stayed, so the respondent argues.

[16]. There are two difficulties with this contention on behalf of the respondent. The first one is that, even in the event of the applicants being absent from the hearing of the application for leave to appeal, this court would still be required to adjudicate the application. There would therefore be no need to stay the application for leave to appeal.

[17]. Secondly, and importantly, the applicants, although their powers have been suspended, retain a residual capacity to continue dealing with this matter in view of the fact that it is in the middle of litigation processes. I come to this conclusion on the basis of the authority in *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others*⁵, in which it was held as follows: -

⁵ *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C); 1993 (2) All SA 534 (C) p537.

‘To hold that after the granting of a provisional liquidation order the directors of the company which has been provisionally liquidated, by virtue of such order, have lost their *locus standi in iudicio* to oppose the granting of a final order would fly in the face of the very object and purpose of the *rule nisi* and it would, therefore, *be quite wrong to emasculate such object and purpose by finding that the directors have lost their residual power to show cause why the company should not be wound up*, for that matter to anticipate the return day of the *rule nisi*. It would be quite ludicrous to hold that a director, or a company acting through its directors, is not an interested party when it comes to deciding whether it and/or they have the right to be heard on the return day of the *rule nisi*.’ (Emphasis added)

[18]. It was for all of the foregoing reasons that I had dismissed, with costs, the respondent’s Rule 7(1) point *in limine*. I was satisfied, as envisaged by rule 7(1), that the applicants’ legal representatives are authorised to act herein on behalf of the applicants.

Order

[19]. In the circumstances, the following order is made:

- (1) The respondent’s application for leave to appeal succeeds.
- (2) The respondent is granted leave to appeal to the Full Court of this Division.
- (3) The costs of this application for leave to appeal shall be costs in the appeal.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	30 October 2025 – ‘virtually’ as a videoconference on <i>Microsoft Teams</i>
JUDGMENT DATE:	31 October 2025 – Judgment handed down electronically
FOR THE APPLICANTS:	S Mahlangu
INSTRUCTED BY:	Mdyesha Ndema Attorneys Inc, Fourways, Randburg
FOR THE RESPONDENT:	T Mpumlwana
INSTRUCTED BY:	T Mpumlwana & Associates, Morningside, Durban