

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2020-42224

DATE: 14 November 2025

(1) **NOT REPORTABLE**

(2) **NOT OF INTEREST TO OTHER JUDGES**

In the matter between:

NDIITWANI GRACE NNDWAMMBI N O	First Applicant
DITLHARE CASTALIA MOLOI N O	Second Applicant
SEWKUMAR ASHENDRA CHATHURY N O	Third Applicant
ALEXANDRA JOHANNA RUSSELL N O	Fourth Applicant
HOLGER MAUL N O	Fifth Applicant
MARTIN SEBASTIAN SOLOMON N O	Sixth Applicant
BRENDA BAIJNATH N O	Seventh Applicant
LEBELO ISAAC LUKHELE N O	Eighth Applicant

(Being the Trustees for the time being of the

SASOL SIYAKHA ENTERPRISE AND SUPPLIER DEVELOPMENT TRUST)

and

SEMATRA (PTY) LIMITED	First Respondent
TSELANE MARIA MALATJI	Second Respondent
YINGISANI HOPE MABASA	Third Respondent

Neutral Citation: *Nndwammbi N O and Others v Sematra and Others (2020-42224) [2025] ZAGPJHC --- (14 November 2025)*

Coram: Adams J

Heard: 13 November 2025

Delivered: 14 November 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 10:30 on 14 November 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 first, second and third respondents' application for leave to appeal succeeds.
 - (2) The respondents are 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 opposed Application by the applicants for *inter alia* an order perfecting the security the Sasol Siyakha Trust has over movable property owned by the first respondent (Sematra). The applicants are the Trustees for the time being of the said Trust, who I shall collectively refer to as 'the Sasol Siyakha Trust' or simply as 'the Trust', as was done in the judgment *a quo*. The first, second and third respondents are the applicants in this application for leave to appeal and the respondents herein were the applicants in the main application. On 25 September 2025, I granted the applicants' application and ordered a perfection of the security held by the applicants over the first respondent's property as per and in terms of the Special Notarial Bond registered in the Pretoria Deeds Office on 11 September 2020 under number B[...] ('the Special Notarial Bond'). I also granted a costs order in favour of the applicants against the respondents.

[2]. The respondents apply for leave to appeal the whole of my judgment and the aforesaid order of 25 September 2025, as well as the reasons therefor. And the application for leave to appeal is based on the provisions of sub-section (i)

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)’

[3]. The application for leave to appeal is against my factual and legal findings that the applicants have satisfied the requirements for a perfection of the said security. I erred and misdirected myself, so the respondents contend, in my application of the law by my failure to deal with the respondents’ legal points *in limine*. In particular, so the contention on behalf of the respondents goes, I erred in not finding that the applicants lacked the necessary *locus standi* to have launched the main application. The respondents furthermore submit that the court *a quo* erred and misdirected itself in refusing to grant the respondents’ application for a postponement of the main application and in finding that the interlocutory application by the respondents to join Sasol South Africa in these proceedings as a fourth respondent is ill-conceived, ill-advised and equally bad in law. In refusing the application for a postponement, so the argument continues, I failed to exercise my discretion judicially.

[4]. On the merits of the main application, the respondents contend that I ought to have found, as alleged by them, that it was agreed between the Trust and Sematra that repayment of the loan amount would be made from the proceeds of the work allocated to Sematra by the Sasol Group of Companies. I should have had regard, so the respondents contend, to the engagement between the parties at the relevant time, which, according to the respondents, confirm the foregoing agreement, as do the subsequent discussions between the parties. In that regard, it is alleged by the respondents that the arrangement was to the effect that before Sasol South Africa Limited could process payments to Sematra, it would first consult the Trust to enable a determination on how the amount should be split between Sematra and the Trust. This arrangement has

allegedly been in place for the past three to four years and, during this period, the Trust has been receiving payment on a monthly basis.

[5]. Lastly, it is contended on behalf of the respondents that I erred in finding that there is no nexus established from the evidence of the respondents between the loan agreement and the conclusion that the loan amount was repayable only in the event of SSA utilising the services of Sematra from which engagement the latter company would service the loan account.

[6]. Nothing new has been raised by the respondents 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 respondents 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 the written agreement between the parties, in particular the express wording, completely defeats the case on behalf of the respondents. Not only does the agreement not contain the provisions contended for by the respondents, but the clauses also provide for exactly the opposite to what the respondents contend the agreement was.

[7]. As regards the point *in limine* raised by the respondents in relation to the authorisation of the proceedings by all of the applicants, there is, in my view, no merit in that point. The fact that the court *a quo* granted the relief sought by the applicants implies that the point was rejected. In any event, the principles enunciated in *Eskom v Soweto Town Council*¹ find application herein. It is trite that, when an attorney who acts on behalf of a party is authorised so to act, there is no need for any other person to be additionally authorised. Moreover, this legal point is one that would have been before the court which dealt with part 'A' of the application. That court granted an order by agreement between the parties, which means that the point is no longer extant.

¹ *Eskom v Soweto Town Council* 1992 (2) SA 703 (W).

[8]. 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'.

[9]. In *Ramakatsa and Others v African National Congress and Another*², 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.

[10]. 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 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.'

[11]. In *Mont Chevaux Trust v Tina Goosen*³, the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

³ *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

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*⁴. 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*⁵.

[12]. I am persuaded that the issues raised by the respondents in this 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.

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

Order

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

- (1) The first, second and third respondents' application for leave to appeal succeeds.
- (2) The respondents are granted leave to appeal to the Full Court of this Division.

⁴ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

⁵ *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).

- (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: 13 November 2025

JUDGMENT DATE: 14 November 2025 – Judgment handed down electronically

FOR THE APPLICANTS: T Chavalala

INSTRUCTED BY: Mathopo Moshimane Mulangaphuma
Incorporated t/a DM5 Incorporated,
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FOR THE RESPONDENTS: K J Maleka

INSTRUCTED BY: Leshilo Incorporated Attorneys, Pretoria