

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

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

CASE NO: 2023-007716

DATE: 28 NOVEMBER 2025

In the matter between:

GOOLAM YOUSUF MAHOMED N O

First Applicant

YUSUF SURTEE N O

Second Applicant

ABDOOL RAHMAN ISMAIL LAHER N O

Third Applicant

MOHAMMED ALI YUSUF SEEDAT N O

Fourth Applicant

and

H E SALEH A AZIZ MOHAMMED AL-AL SHAIK N O

First Respondent

FAISAL HAMAD AHMED MOALLA N O

Second Respondent

ABDAILAH F AL-LHEEDAN N O

Third Respondent

MOHAMMED ABDULWAHED A. ALARIFI N O

Fourth Respondent

FAHAD FALEH MEGWAL AL OTAIBI N O

Fifth Respondent

Neutral Citation: *Mahomed N O and Others v Al-Al Shaik N O and Others*
(2023/007716) [2025] ZAGPJHC --- (28 November 2025)

Coram: Adams J

Heard on: 28 November 2024 – ‘virtually’ as a videoconference on *Microsoft Teams*.

Delivered: 28 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 12:00 on 28 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 – Another compelling reason for leave to appeal to be granted (s 17(1)(a)(ii)) – the decision sought to be appealed against involves an important question of law – Leave to appeal granted to the Full Court of the Gauteng Division of the High Court.

ORDER

- (1) The respondents are granted leave to appeal to the High Court of this Division.
 - (2) The cost of this application for leave to appeal shall be costs in the appeal.
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JUDGMENT [APPLICATIONS FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original opposed application by the first to the fourth applicants for an order terminating the *King Fahad Islamic Centre Trust* ('King Fahad Trust' or simply 'the Trust') and for related ancillary relief. In that opposed application, the first to fifth respondents preferred a counter-application against the applicants for relief relating to the administration of the Trust and for orders compelling the applicants to produce documentation relating to the administration of the Trust.

[2]. On 24 March 2025 I handed down a written judgment and an order in terms of which most of the relief sought by the applicants in the main application was granted with costs. Importantly, an order was granted for the termination of the Trust, as I also ordered the redistribution of the trust assets. The first to fifth respondents' counterapplication was dismissed with costs.

[3]. The first to fifth respondents apply for leave to appeal to the Supreme Court of Appeal of South Africa, alternatively, to the Full Court of this Division, against the whole of the aforementioned judgment and order, including the order for costs. The respondents contend that I erred in granting the aforesaid order and that I should instead have dismissed the applicants' application with costs and that the counter application ought to have been granted also with costs.

[4]. In a nutshell the respondents' case in this application for leave to appeal is that I erred in finding that the applicants had satisfied the jurisdictional test under s 13 of the Trust Property Control Act 57 of 1988 (TPCA). I ought to have found, so the contention on behalf of the respondents goes, that 'the impasse between the Trustees relied upon by the Court was the result of conduct attributable to the applicants themselves, and not to any inherent defect in the joint governance provisions of the Trust'. Accordingly, so the argument is concluded, the court *a quo* should have found that the jurisdictional requirements under s 13 of the TPCA were not satisfied.

[5]. The respondents also contend that I erred in applying the test in *Plascon-Evans* and that there was a dispute of fact as regards the breakdown of the Trust and the hampering of its objects. Moreover, so it is submitted on behalf of the respondents, the court *a quo* erred in granting relief 'which outsources the final determination of a material financial obligation – namely, the amount to be paid by the Houghton Muslim Jamaat Trust to the Saudi Arabian Government – to an independent umpire, without affording the respondents any procedural safeguards or meaningful access to judicial recourse'.

[6]. As regards their counter-application, the respondents contend that I erred in my finding that same was moot. The relief in the counter-application related to the conduct of the Trust. It entailed the setting aside of decisions made by the applicants and required them to account for decisions taken by them regarding the management of the Trust.

[7]. Nothing new has been raised by the respondents in their application for leave to appeal. In my original judgment of 24 March 2025, I have dealt with most, if not all of the issues raised by the respondents in their application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate the conclusion I reached in my said judgment which is that: (a) The Deed of Trust of the *King Fahad Islamic Centre Trust* provides that the Saudi Arabian Trustees were to cooperate and work jointly with the South African Trustees with a view to attaining the objects of the Trust; (b) This provision has as a consequence that

the construction of the Masjid and the Islamic Centre could not be completed, as contemplated by the Deed of Trust and its main objects; (c) This consequence could not possibly have been contemplated or foreseen by the founder of the Trust; and (d) This provision clearly, in the circumstances described above, hampers, *nay* completely defeats the achievement of the objects of the founder, notably the construction and the completion of the Masjid and the Islamic Centre and the day-to-day running of the Masjid and the Centre, in addition to it prejudicing the interests of the beneficiaries, namely members of the Islamic community in South Africa.

[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 judges concerned are of the opinion that ‘the appeal *would* have a reasonable prospect of success’.

[9]. 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 ‘would’ 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:

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

‘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*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 Courts 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.

[12]. I am persuaded that the issues raised by the respondents in their 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 therefore conclude that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal

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).

conclusions. The appeal, therefore, in my view, does have a reasonable prospect of success.

[13]. Moreover, I am of the view that there is another compelling reason why the appeal should be heard, as envisaged by s 17(1)(a)(ii) of the Superior Courts Act, and that relates to the fact that the issues implicated in this matter are novel insofar as they relate to the termination of a Trust on the basis of s 13 of the TPCA. Put another way, the decision sought to be appealed against involves an important question of law.

[14]. Leave to appeal should therefore be granted. And in that regard, I do not believe that the complexity of the legal issues raised in this matter is such that I should grant leave to appeal to the Supreme Court of Appeal.

Order

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

- (1) The respondents are granted leave to appeal to the Full Court of this Division.
- (2) The cost 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:	28 November 2025
JUDGMENT DATE:	28 November 2025 – handed down electronically
FOR THE FIRST, SECOND, THIRD AND FOURTH APPLICANTS:	R Bhana SC and S Mohammed
INSTRUCTED BY:	Koor Attorneys, Houghton Estate, Johannesburg
FOR THE FIRST TO THE FIFTH RESPONDENTS:	N Redman SC and A Vorster
INSTRUCTED BY:	Shaheem Samsodien Attorneys, Sandown, Sandton