

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 11872/2023

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
.....	
DATE 21 January 2026	SIGNATURE.....

In the matter between:

KGANTSI DAVID MALEPA

**1ST APPLICANT / 1ST RESPONDENT
IN MAIN APPLICATION**

PAULINA MMAPULE MALEPA

**2ND APPLICANT / 2ND RESPONDENT
IN MAIN APPLICATION**

-and-

**NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

**RESPONDENT / APPLICANT IN
MAIN APPLICATION**

Delivered

: 21 January 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **21 January 2026 at 10:00 am.**

Date heard : **3 November 2025**

Coram : **Bresler AJ**

**JUDGMENT -
(LEAVE TO APPEAL)**

BRESLER AJ:

Introduction:

- [1] The Applicants (1st and 2nd Respondents in the Main Application) applies for Leave to Appeal against the judgment and order handed down by this Court on the 16th of September 2025 in terms whereof the Respondent (Applicant in the Main Application)'s forfeiture application) in terms of Section 48, read with Section 50 of the **Prevention of Organised Crime Act**, Act 121 of 1998 (hereinafter 'POCA'), was granted with ancillary relief.

- [2] The grounds of application are *inter alia* that the court erred in evidential findings to the extent that the court failed to consider all the evidence filed in the present and in the previous withdrawn proceedings.
- [3] It is furthermore submitted that the Court erred in so far as a finding was made on the balance of probabilities whilst it is trite law that application proceedings are not designed to determine probabilities.
- [4] During the hearing of the matter, the Court raised the question if the wording of section 50 of POCA, stating that the court must make findings 'on a balance of probabilities' does not warrant a compelling reason why the appeal should be heard in so far as this conflicts with the normal principle to be applied in motion proceedings. Understandably, this submission was rejected by the Respondent who persisted with the reasoning that there is no reasonable prospect of success on appeal and as such, leave should be refused.

Applicable legal principles:

- [5] An application for leave to appeal is governed by section 17(1) of the **Superior Courts Act**, Act 10 of 2013 which provides:

'17 Leave to appeal

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,
- (b) the decision sought on appeal does not fall within the ambit of section 16
- (2) (a), and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[6] In **MEC Health, Eastern Cape v Mkhitha**¹ the Supreme Court of Appeal said the following (reference to other authorities omitted):

‘[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear 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; or there is some other compelling reason why it should be heard.

[17] 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

¹ **MEC Health, Eastern Cape v Mkhitha** (1221/15) [2016] ZASCA 176 (25 November 2016)

hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[7] In **Ramakatsa & Others v African National Congress & Another**², at paragraph [10], Dlodlo JA said the following:

'Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act) leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospects of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This court in Caratco³, concerning the provisions of s 17(1)(a)(ii) of the Superior Courts Act pointed out that if the court is unpersuaded that there are prospects of success, it must still inquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this court correctly added that 'but here too the merits become vitally important and are often decisive.' I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the

² (724/2019) [2021] ZASCA 31 (31 March 2021)

³ **Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd** 2020 (5) SA 35 (SCA)

appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court could reasonably arrive at a conclusion different to that of the trial court. In other words the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

- [8] In this court's view, the potential difficulty in determining the balance of probabilities in an application and the extent to which a court must deviate in determining applications in terms of POCA, constitutes a sufficiently compelling reason for the appeal to be heard. I am therefore inclined to grant leave to appeal to the full court of the Limpopo Division of the High Court, Polokwane.

Order:

- [9] **In the result the following order is made:**

9.1 Leave to appeal is granted to the full court of the Limpopo Division of the High Court, Polokwane.

9.1 The costs of the application are costs in the appeal.


M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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