



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 2025-158762

In the matter between:

NOBLESFONTEIN FARM (PTY) LTD

Applicant

(Registration Number: 2010/004110/07)

and

KONSORTIUM OPERATIONS (PTY) LTD

First Respondent

(Registration Number: 2012/142575/07)

GABRIEL WILLEM ANDRIES VAN HEERDEN

Second Respondent

Coram: GROENEWALDT AJ.

Heard: 19 January 2026.

Delivered: 23 January 2026.

Summary: *This is an application for leave to appeal which is dismissed with costs.*

ORDER

1. Leave to appeal is dismissed.
 2. The respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, such costs to be taxed on scale C.
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JUDGMENT

Groenewaldt AJ

INTRODUCTION

[1] This is an application for leave to appeal against the whole of the judgment and order, granted on 3 October 2025, in which the following order was granted:

- “1. That the matter be heard on an urgent basis, and that there be dispensed with the need for the applicant to adhere strictly to the rules of Court insofar as notice periods and service are concerned.
2. That the applicant is granted leave to institute and proceed with this application against the first respondent in terms of section 133(1)(b) of the **Companies Act** 71 of 2008.
3. That the first respondent is directed to hand over the flock of sheep identified by way of Annexure EJR1 to the founding affidavit (“the Noblesfontein flock”), alternatively to hand over as many of the Noblesfontein flock that it may be able to identify with reference to Noblesfontein tags together with Konsortium pink tagged ewes in a combined total of 1 551 (one thousand five hundred and fifty one), alternatively to hand over 1 551 (one thousand five hundred and fifty one)

Konsortium tagged pink ewes to the applicant within three weeks of the date of this order.

4. In the event that the first respondent fails to hand over the sheep referred to in this order, the applicant is granted leave to supplement its papers and apply for an order authorising the sheriff of this court to enter the premises of the second respondent (being Farm Dombietersfontein) or wherever else the Noblesfontein flock or the Konsortium pink tagged ewes may be found within the northern cape province, and to take whatever steps may be necessary to take the Noblesfontein flock, or as many of the Noblesfontein flock that they may be able to be identified with reference to Noblesfontein tags together with Konsortium pink tagged ewes in a combined total of 1 551 (one thousand five hundred and fifty one), alternatively, 1 551 (one thousand five hundred and fifty one) Konsortium tagged pink ewes, into his possession on behalf of the applicant.
5. That the first and second respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, such costs to include the costs of senior counsel on Scale C and the costs occasioned by the postponement of the matter on 19 September 2025."

[2] The Respondents intend applying for leave to appeal on no fewer than six grounds. In most cases the grounds are merely repetitive. Previously the test to be applied in an application for leave to appeal was whether there were reasonable prospects that another court may come to a different conclusion. The position is now regulated by the Superior Court Act 10 of 2013 ("the Act")

[3] In terms of section 17(1)(a) of the Superior Courts Act 10 of 2013 ("the Act"),

"(1) Leave to appeal may only be given when the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard..."

- [4] Under the Act, section 17(1)(a)(i) provides for leave to appeal to be given only where the Judge is of the opinion that the appeal would have a reasonable prospect of success.
- [5] In *Mount Chevaux Trust v Goosen*¹, Bertelsmann J held that the threshold for granting leave to appeal has been raised in the Act. The Learned Judge found that the use of the word “would” indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.
- [6] The Act has therefore raised the bar for applications for leave to appeal and an appellant therefore faces a higher and more stringent threshold to navigate.

FIRST GROUND OF APPEAL

- [7] The First ground of appeal raised by the Respondents is that the Court a quo erred in granting final relief where disputes of fact existed.
- [8] To this end the Respondents argued that the Court failed to take into account the question of onus and the fundamental dispute of fact pertaining to the identity of the property which the Applicant sought to have returned in its initial application.
- [9] The Respondents’ contention that the property cannot be identified, is flawed. The Respondents’ answering affidavit confirms that the Applicant’s sheep have been tagged with pink Konsortium ear tags and are therefore identifiable as such.² The Respondents further aver that at least some of the Konsortium tagged sheep are in the possession of the First Respondent³ and further that the Applicant had retained ownership of the sheep even though it was rebranded with different tags.

¹ (LCC14R/2014) [2014] JDR 2325.

² Record 009-15, paragraph 18 of the answering affidavit.

³ Record 009-8, paragraph 6.9 of the answering affidavit.

[10] Accordingly, the relief was granted on common cause facts and also on the premise of the Respondents own version.

[11] I am unpersuaded that there is any merit in this ground.

SECOND GROUND OF APPEAL

[12] The Respondents argued that the parties in this matter presented mutually destructive versions as to whether the Noblesfontein Flock, the return of which was being claimed, was the subject of the joint venture agreement, whether any or all of them could be identified, with reference to the original Noblesfontein ear tags, as claimed by the Applicant.

[13] I have dealt with this ground in the reasoning above as well as in my judgment especially relating to the legal principle of *commixtio*.

[14] I am not convinced that factual disputes existed as claimed by the Respondents.

THIRD GROUND OF APPEAL

[15] The Respondents contend that the Court erred in relying on the prayer for alternative relief and that the further relief that was claimed could not be housed under that term. There was also no application by the Respondents for a postponement of the application in order to deal with the amended relief.

[16] I am satisfied that the amendment resorts under the rubric of further and/or alternative relief.

FOURTH GROUND OF APPEAL

[17] The fourth ground of appeal is that the sheep which the Applicant was the owner of cannot be identified.

- [18] The order of the Court is couched in clear language and able of being executed by the sheriff.
- [19] At the risk of repetition, the Respondents own version is that the sheep owned by the Applicant are tagged with pink Konsortium tags. The grounds raised herein are therefore baseless.

FIFTH GROUND OF APPEAL

- [20] The fifth ground of appeal is that the cancellation or termination fee was not paid and the return of the sheep was not justified for want of non-compliance.
- [21] I find no relevance in this ground in relating to the dispute at hand as a fee in terms of the agreement between the parties can only be paid if it has been determined. In this case the quantum of the fee has not yet been determined.
- [22] I am unpersuaded that any merit exists in this ground of appeal.

SIXTH GROUND OF APPEAL

- [23] The last ground of appeal is that the Court failed to have regard to the impossible burden which has been placed on the First Respondent and its Business Rescue Practitioners to comply with the relief. Business rescue practitioners are not a special category of litigant and should not enjoy special treatment.
- [24] This wide ground of appeal has been dealt with in my judgment and I find no merit in it.
- [25] In conclusion, I find that there are no reasonable prospects that a court of appeal would come to a different conclusion on any one or more of the grounds raised and also that there are no compelling reasons why the appeal should be heard.

[26] In the result, I make the following order

1. **LEAVE TO APPEAL IS DISMISSED.**
2. **THE RESPONDENTS ARE ORDERED TO PAY THE COSTS OF THIS APPLICATION JOINTLY AND SEVERALLY, THE ONE PAYING THE OTHER TO BE ABSOLVED, SUCH COSTS TO BE TAXED ON SCALE C.**



GROENEWALDT AJ
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:	Adv BJ Manca SC
Instructed by:	Potgieter Joubert Inc. c/o Elliott Maris Inc. Kimberley.
For the 1 st & 2 nd Respondents:	Adv RGL Stelzner SC
Instructed by:	Rufus Dercksen Inc. c/o Engelsman Magabane Inc. Kimberley.