REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: **025143/2022**

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: YES/~~NO~~

2026/01/23 [redacted]

In the matters between: -

ANDRIAS PHILLIPPUS RUDOLPH KEMP	**FIRST APPLICANT**
ZEEKOEGAT NR. (PTY) LTD	**SECOND APPLICANT**

And

AS VAN DYK FAMILIE TRUST (PTY) LTD	**FIRST RESPONDENT**
JUSTUS VAN DER BERG N.O.	**SECOND RESPONDENT**
MARIA JOHANNA ELIZABETH VAN DER BERG	**THIRD RESPONDENT**

RE:

AS VAN DYK FAMILIE TRUST (PTY) LTD	**FIRST APPLICANT**

JUSTUS VAN DER BERG N.O.	**SECOND APPLICANT**
MARIA JOHANNA ELIZABETH VAN DER BERG	**THIRD APPLICANT**

AND

ANDRIAS PHILLIPPUS RUDOLPH KEMP	**FIRST RESPONDENT**
ZEEKOEGAT NR. (PTY) LTD	**SECOND RESPONDENT**

LEAVE TO APPEAL JUDGMENT

BAQWA, J

Introduction

[1] This is an application for leave to appeal against the judgement handed down by this Court on 7 March 2025.

The Test

[2] The "standard" test to be applied is set out in Section 17(1)(a)(i) of the Supreme Court Act 10 of 2013 (the Act), namely, whether there is a reasonable possibility that another court would find differently from this court.

[3] An alternative pathway to leave to appeal is set out in Section 17(1)(a)(ii) of the Act, namely, whether there are other compelling reasons why leave ought to be granted.

Prospects of success.

[4] In the *MEC of Health, Eastern Cape v Mkhitha and Anothers*[1] the SCA said:

"An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or a realistic chance of success on appeal. A mere possibility of success, an arguable case, or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[5] None of the grounds of appeal raised by the applicant demonstrate any prospect of success.

Analysis

[6] The first ground of appeal is that although the court correctly found that the applicants rely on the fact that the first respondent is the only remaining director of the second respondent and that the applicants seek to compel him to convene a meeting of shareholders, the court failed to consider the fact that the applicants changed the directorship irregularly and that annexure "D" to the founding affidavit reflects seven directors and one alternative director.

[1] *[2016/ZASCA 176(25 November 2016)].*

[7] As demonstrated in the judgement, the evidence shows that there is only one director of the second respondent and that there are therefore no other directors to be given notice of the application or to be joined as parties to the application.

[8] In terms of Section 68 of the Companies Act 71 of 2008 (the Act), it provides that each director of a profit company must be elected by the persons entitled to exercise voting rights in such election and Section 71 of the Act provides for the removal of a directors. The allegation by the respondents that the applicants changed the directorship at CPRO is not sustainable in the circumstances.

[9] The second ground is based on a dispute of the applicants' shareholdings.

[10] The dispute arises from the pending litigation between the parties and other entities.

[11] Based on this ground, it is contended that this court erred in finding that the respondents are shareholders of the second respondent, whereas all the shares were sold to the Dries Kemp Family Trust (the Trust).

[12] Whilst it is common cause that some agreement had been entered into between the applicants, the Trust, and other entities, it is also common cause that such agreements had not been followed up to finality having been entered into some 10 years ago. The failure to pursue the said agreements resulted in the shares never being transferred to the Trust.

[13] In the circumstances, it cannot be validly contended that this court erred in its finding that the applicants are the lawful shareholders of the second

respondent.

[14] The fact that there may be pending litigation between some of the parties and others to enforce those contracts does not deprive the applicants of their shareholding. Consequently, they remain shareholders with all the rights afforded them by the relevant legislation.

[15] To argue that pending the enforcement of the contract, the shareholders are no longer shareholders constitutes an argument or contention that is not valid in law.

[16] Regarding the nonjoinder of other persons said to be shareholders, this was duly dealt with in the judgement, in that such persons would not be prejudiced by the order of the court since notification of the other shareholders is provided for in the order and that they would be granted an opportunity to vote and exercise their rights which they had been denied over the years.

[17] The judgement is also firmly based on the fact that the first respondent and the Justrie Trust are shareholders who hold in aggregate between them no less than 10% of the voting rights entitled to be exercised in relation to the matters proposed to be considered at the meetings as envisaged in Section 61(3)(b) of the Act.

Conclusion

[18] In the circumstances, no other court would come to a different conclusion.

Resultantly the appeal would not have any reasonable prospects of success.

Order

[19] In the result, I make the following order:

19.1 The application for leave to appeal is dismissed with costs.

[redacted]

SELBY BAQWA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 14 October 2024

Date of judgment: 23 January 2026

Appearance

behalf of the Applicants	Adv M Snyman SC
	smphahlele@law.co.za
Instructed by	Cremer & Strydom Inc
On behalf of the Respondents	Adv WW Gibbs
	waynewgibbs@gmail.com
Instructed by	Van Dyk Steenkamp Attorney Inc