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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE No: 12193/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 6 FEBRUARY 2026

SIGNATURE: **DIAMOND AJ**

In the matter between: -

BA-PALABORWA LOCAL MUNICIPALITY

APPLICANT

and

**MINISTER OF AGRICULTURE,
LAND REFORM & RURAL DEVELOPMENT.**

FIRST RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL,
DEPARTMENT OF COOPERATIVE
GOVERNANCE, HUMAN SETTLEMENTS
AND TRADITIONAL AFFAIRS, LIMPOPO
PROVINCE.**

SECOND RESPONDENT

**THE MASTER OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE.**

THIRD RESPONDENT

THE REGISTRAR OF DEEDS,

POLOKWANE

FOURTH RESPONDENT

MOGUDI JOYCE MOKHESE

FIFTH RESPONDENT

NEIL CHRISTIAAN JACOBS N.O.

SIXTH RESPONDENT

THOMAS LUKOSE

CHAMAKALAKIZHAKETHIL N.O.

SEVENTH RESPONDENT

JOY PREEMA N.O.

EIGHTH RESPONDENT

DEVENDRA BABOOBHAI N.O.

NINTH RESPONDENT

THAKI WILLIAM MOJAPELO

TENTH RESPONDENT

MASAKOMARY MOJAPELO

ELEVENTH RESPONDENT

and

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

DIAMOND A J:

[1] The applicant seeks leave to appeal against the whole of the judgment and order delivered on 3 November 2025, in terms whereof its review application was dismissed with costs, including the costs of counsel on scale C.

[2] The parties are cited as in the main application. For convenience I will refer to the Ba-Phalaborwa Local Municipality as the Applicant, the trustees of the Chamakala Trust (the 7th, 8th and 9th respondents a quo) as the Trust, and to Mr and Mrs Mojapelo (the 10th and 11th respondents a quo) as the Mojapelos.

[3] In the main judgment the court held, in essence, that:

- By operation of section 2 of the Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA), the deceased, Mr Jackson John Mogudi, became full owner of Erf 3[...] Namakgale-B under Deed of Grant T[...].
- After his death, the executor in his estate and the surviving spouse jointly transferred the property to the Trust pursuant to a sale recorded on the prescribed form (BLD/PLD 007), which was duly registered in the Pretoria Deeds Office as T[...]².
- The causa for this transfer was the private-law sale between the estate/surviving spouse and the Trust, and not any “decision” of the Applicant or the MEC.
- The Applicant failed to establish any factual or legal basis to impugn the Trust’s title under the Deeds Registries Act, nor did it seek the cancellation of T[...]² in terms of section 6 of that Act.
- The various “resolutions” by the Applicant and the MEC in 2015, even if set aside, would not in law unravel a valid deed of transfer.
- Possible private-law remedies for the Mojapelos (based on double-sale doctrine, the doctrine of notice, restitution or damages) could not be granted on the papers before the court, which contained no proof of a prior sale to them or of notice to the Trust.

[4] Against that background the Applicant now contends that another court would come to a different conclusion, and advances grounds of appeal broadly corresponding to those addressed in the heads of argument filed on its behalf and on behalf of the Trust.

[5] The Trust opposes the application for leave to appeal and submits that the Applicant has not met the threshold in section 17(1) of the Superior Courts Act 10 of

2013, either on prospects of success or on the existence of some other compelling reason for an appeal to be heard.

[6] The statutory test for leave to appeal

[7] Section 17(1) of the Superior Courts Act provides, in relevant part, that:

- “Leave to appeal may only be given where the judge or judges concerned are of the opinion that—
 - o the appeal would have a reasonable prospect of success; or
 - o there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[8] The change from “might” to “would” in section 17(1)(a)(i) has raised the bar for leave to appeal. It is now well-established that mere arguability or the possibility that another court may differ is insufficient. There must be a sound, rational basis to conclude that an appeal court could reasonably reach a different result.

[9] In *MEC for Health, Eastern Cape b Mkhitha and Another*¹ the Supreme Court of Appeal emphasised that leave to appeal “*must not be granted unless there is truly a reasonable prospect of success*” and that “*a mere possibility of success, an arguable case or one that is not hopeless is not enough*”. There must be “*a sound, rational basis*” for the conclusion that there are prospects of success on appeal.

[10] In *S v Smith*² the court held that the test “*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*” and that prospects must be “not remote but have a realistic chance of succeeding”.

¹ 2016 ZASCA 176 Par 16 and 17.

² 2012 1 SACR 567 (SCA) Par 7.

[11] These authorities have been consistently applied in High Courts when adjudicating applications for leave to appeal under section 17.

[12] It follows that the Applicant must show either that an appeal would have a reasonable prospect of success on the record as it stands, or that there is a compelling reason, such as a novel question of law or conflicting judgments, justifying an appeal despite poor prospects.

THE RELIEF SOUGHT IN THE MAIN APPLICATION

[13] It is useful to restate the relief the Applicant sought in the principal application. In broad terms, the Applicant asked for:

- Condonation in terms of sections 7 and 9 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) for launching the review outside the 180-day period.
- An order declaring the Applicant's decision, dated 9 September 2015, to "process, finalise and recommend" the transfer of the property to the Trust "void ab initio".
- An order reviewing and setting aside the MEC's decision of 21 September 2015 approving the transfer to the Trust as "unlawful" and "unconstitutional".
- An order compelling the MEC to finalise the application to transfer the property from the deceased to the Mojapelos, alternatively to take a decision thereon within 30 days.
- An order compelling the Registrar of Deeds, if necessary, to register the property in the names of the Mojapelos within 30 days after the MEC's decision.

[14] The Applicant did not, in its notice of motion, seek an order cancelling the Trust's title deed, T[...]2, in terms of section 6 of the Deeds Registries Act 47 of 1937, nor did it frame its case as one seeking just and equitable remedial relief against the Trust or itself, such as compensation or substitutionary relief.

[15] The grounds for review pleaded in the founding affidavit were confined to the proposition that there had been an earlier "recommendation" or transaction in favour of the Mojapelos in 2004, and that the Applicant's later "recommendation" in favour of the Trust, and the MEC's approval, were unlawful because they disregarded this earlier transaction.

[16] During the hearing of the review, the Applicant also alleged fraud by municipal officials, but this was never factually substantiated to the standard articulated in cases such as *Nedperm Bank Ltd v Verbri Projects CC*³. In the present application for leave to appeal, counsel for the Applicant expressly abandoned fraud as a ground of review.

THE CONUNDRUM ARISING FROM THE RELIEF SOUGHT

[17] In argument on leave to appeal, I put the following difficulty to counsel for the Applicant. If the relief sought were granted, the effect would be:

- to invalidate the current transfer to the Trust by setting aside the Applicant's and MEC's 2015 decisions;
- to compel the Registrar of Deeds to register the property in the names of the Mojapelos;
- without any order cancelling T[...]2.

[18] I asked counsel how such an order could avoid a situation in which, at least for a time, there would be two title deeds—one in the name of the Trust and another

³ 1993 3 SA 214 (W).

in the name of the Mojapelos—each purporting to evidence ownership of the same erf. Counsel did not provide a satisfactory answer.

[19] That conundrum is not merely practical. It reveals a more fundamental legal flaw in the Applicant's case: the relief sought is structurally incapable, within the framework of ULTRA and the Deeds Registries Act, of producing a coherent and lawful outcome.

[20] The Applicant's grounds for appeal must therefore be assessed against this background.

THE CENTRAL FINDINGS IN THE MAIN JUDGMENT

[21] The main factual and legal findings can be summarised briefly.

[22] First, it was common cause that:

- The deceased held Deed of Grant T[...] over Erf 3[...] Namakgale-B, a former Proclamation R293 property.
- In terms of section 2, read with Schedule 1, of ULTRA, this deed of grant was automatically converted into full ownership in his favour on commencement of ULTRA.
- The property therefore fell to be administered and transferred under the Deeds Registries Act, with the Registrar of Deeds assuming the functions previously exercised by racially-based administrative authorities.

[23] Secondly, the Trust acquired title by virtue of a sale concluded with the executor of the deceased estate and the surviving spouse, evidenced in the prescribed application form BLD/PLD 007 and registered in the Pretoria Deeds Office as title T[...]2. The causa recorded in that instrument is "sale".

[24] Thirdly, there is no evidence on the papers that the Trust acted in bad faith, that it had notice of any prior transaction in favour of the Mojapelos, or that the transfer to the Trust was tainted by fraud perpetrated by either party to that sale.

[25] Fourthly, whatever administrative role the Applicant and the MEC may have retained in processing applications post-ULTRA, their “decisions” could not constitute the causa of a transfer which, in terms of the statutory framework, occurs upon lodgment and registration of the appropriate deed or form in the deeds registry.

[26] Fifthly, no relief was sought, nor facts pleaded, to engage section 6 of the Deeds Registries Act, which regulates the cancellation or amendment of registered deeds. The Applicant instead pursued the review of antecedent municipal and provincial “decisions” under PAJA, in the apparent belief that setting those aside would automatically nullify a registered deed of transfer.

[27] Sixthly, while I acknowledged that the Mojapelos may have remedies rooted in private law—such as claims under the doctrine of notice in a double-sale scenario, or possible restitutionary or delictual claims—those issues could not be resolved on the incomplete and hearsay-laden record before the court.

THE GROUNDS OF APPEAL AND PROSPECTS OF SUCCESS

[28] 27 The grounds of appeal are canvassed at length in the Trust’s heads of argument on leave to appeal. For present purposes, it is sufficient to group them under five headings:

- An alleged failure to engage the review grounds.
- The alleged effect of the Public Protector settlement agreement.
- The characterisation of the role of the Applicant and the MEC under ULTRA.

- The treatment of the doctrine of notice and double sales.
- The refusal to grant compensation or other “just and equitable” relief.

[29] Alleged failure to engage the review grounds:-

[30] The Applicant complains that the court a quo “failed to engage” with the pleaded review grounds and focused only on the validity of the Trust transaction.

[31] This submission is not borne out by a fair reading of the judgment. The core review ground was that, had the Applicant not “recommended” the property to the Trust, the MEC would not have approved the transfer, and that the 2015 decisions should therefore be set aside, with consequential relief to install the Mojapelos as owners.

[32] In order to evaluate that contention, it was necessary to determine:

- what the true causa of the transfer to the Trust was;
- what legal effect the Applicant’s and MEC’s “recommendations” had in the post-ULTRA regime;
- whether setting those decisions aside would in law undo the transfer, or merely leave a valid deed of transfer untouched.

[33] Those questions were fully addressed. The conclusion—that the causa of transfer was the sale recorded in the BLD/PLD 007 form and its registration in the Deeds Office, not the Applicant’s or MEC’s decisions—goes directly to the heart of the Applicant’s PAJA case.

[34] The Applicant has not identified any specific review ground that was overlooked. Its complaint is, in substance, disagreement with the outcome rather than an omission to decide an issue. There is no reasonable prospect that an appeal court would find otherwise.

[35] The Public Protector settlement agreement:-

[36] The Applicant sought to rely, at argument, on a settlement agreement concluded under the auspices of the Public Protector, as though it established that the Trust transfer was null and void.

[37] However:

- In its founding affidavit the Applicant relied on the settlement only to explain the delay in instituting proceedings.
- The settlement records an undertaking by the municipality to “commence with the process of nullifying” the Trust transaction and to proceed with registering the property in the name of the complainants (the Mojapelos).
- It does not contain a binding determination that the transfer to the Trust is invalid, nor could it, standing alone, alter the legal position under ULTRA and the Deeds Registries Act.

[38] The Applicant must stand or fall by the case advanced in its founding papers. It did not plead the settlement as a discrete review ground, nor did it seek relief declaring the Trust transfer invalid on the strength of the Public Protector’s remedial powers.

[39] There is no reasonable prospect that an appeal court would hold that the settlement agreement, properly construed, compels a conclusion that the Trust title is void, or that it can substitute for the statutory mechanisms required to cancel a registered deed.

[40] The role of the Applicant and MEC under ULTRA:-

[41] The Applicant's third and fourth grounds of appeal criticize the judgment's treatment of the municipality's and MEC's roles in transfers of former R293 properties.

[42] ULTRA section 2 converts specified land tenure rights listed in Schedule 1 into ownership by operation of law at the commencement of the Act or on the opening of a township register. Section 6 provides that, from that point on, the transfer of such rights is to be dealt with under the Deeds Registries Act. Section 16D of the Deeds Registries Act reinforces that rights originally acquired under the Black Administration Act must be transferred in accordance with the legislation that created them, but within the Deeds Registry system.

[43] In this statutory setting, the substantive act of transfer is the lodgement and registration of the appropriate deed or prescribed form (such as the BLD/PLD 007 form), evidencing a causa such as sale or inheritance. The continuing use of forms derived from the pre-1994 dispensation does not preserve the old racially-based administrative discretions.

[44] The Applicant did not point to any provision in ULTRA or the Deeds Registries Act that gives the municipality or MEC a surviving discretion that constitutes the causa for transfer, or that empowers them to veto or approve a transfer in a manner that binds the Registrar of Deeds.

[45] The conclusion that the Applicant's and MEC's "decisions" were, at most, procedural steps in the process and not the causa of the transfer is, in my view, correct and consistent with the statutory scheme. The Applicant has not identified any authority to the contrary, nor any conflict of judgments that would warrant the attention of an appeal court.

[46] 42 There is therefore no realistic prospect that a court of appeal would interfere with these findings.

[47] Doctrine of notice and double sales:-

[48] The Applicant also criticizes the treatment of the doctrine of notice and double sales.

[49] The law on double sales and the doctrine of notice is clear.

Where A sells property first to B and then to C:

- Ownership vests in the party who first obtains transfer;
- If the first purchaser (B) is also the first transferee, his or her right is unassailable;
- If the second purchaser (C) is the first transferee, his or her right is unassailable if he or she lacked notice of the prior sale;
- Only if C took transfer with knowledge of B's prior right can B seek to set aside the transfer to C.

[50] In this matter there was no evidence, not even a pleaded case—that:

- there was a valid and enforceable prior sale to the Mojapelos, compliant with ULTRA and the Deeds Registries Act; and
- the Trust took transfer with knowledge of such a prior sale.

[51] On the contrary, the existence of the alleged "*Mojapelo transaction*" rested on hearsay evidence from the current municipal manager, unsupported by the promised confirmatory affidavits from officials with first-hand knowledge, and against the backdrop of alleged admitted internal fraud in the municipal offices.

[52] Given the abandonment of fraud as a ground of review, there is no longer any attempt to allege that the Trust participated in wrongdoing. The Trust therefore stands as a bona fide purchaser for value, with a registered deed of transfer and no notice of any prior competing right.

[53] An appeal court would be confined to the record. On that record, the orthodox application of double-sale and notice principles supports the Trust, not the Applicant or the Mojapelos. There is no sound, rational basis to conclude that a court of appeal could legitimately reach a different conclusion.

[54] Compensation and “just and equitable” relief:-

[55] As a final ground, the Applicant contends that this court should have granted some form of “just and equitable” relief, including compensation to the Trust, by invoking the remedial approach in cases such as *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*⁴.

[56] This argument faces several insurmountable difficulties.

- First, the Applicant did not plead a case seeking constitutional or PAJA remedial relief in the form of compensation or substitutionary orders. Indeed, when the Trust raised a conditional counterclaim for compensation, the Applicant denied that it could or should be ordered to pay such compensation.
- Secondly, AllPay and its progeny presuppose that a ground of review has been established; only then does the court move to the second stage of determining an appropriate just and equitable remedy. In the present matter, no reviewable irregularity has been proved that could constitute the basis for unsettling the Trust’s title.
- Thirdly, the remedial discretion of a court must be exercised within the bounds of the pleadings and the statutory framework. To grant the sort of order now suggested would require:

- o a finding of unlawfulness in the public-law sense;

⁴ 2014 (4) SA 179 (CC).

- o a principled justification for dislodging or qualifying the Trust's registered title; and
- o a pleaded and proven basis for imposing a monetary or other burden on the Applicant or another party.

[57] None of this is present on the current record. It is not the function of an appeal court, still less of a court considering leave to appeal, to re-fashion a case on radically different premises from those pleaded.

[58] There is therefore no reasonable prospect that an appeal court would hold that this court misdirected itself by not granting compensation or other novel remedial relief in circumstances where no primary unlawfulness has been established and no proper case for such relief was pleaded.

THE ABANDONMENT OF FRAUD AND ITS IMPLICATIONS

[59] As noted, counsel for the Applicant expressly abandoned reliance on fraud as a ground for review during the argument on leave to appeal.

[60] The abandonment has important consequences.

[61] First, it removes any basis, even in principle, for seeking to invalidate the Trust's deed on the footing of fraudulent procurement. The law is stringent in this regard: absent fraud, a duly registered deed reflecting a transfer pursuant to a valid causa is not lightly disturbed.

[62] Secondly, it reinforces the conclusion that the Trust is to be treated as a bona fide purchaser for value, entitled to the ordinary protection afforded by the registration system and the doctrine of notice.

[63] Thirdly, it deprives the Applicant of any foothold to argue that the internal irregularities in its own offices can be visited upon the Trust, or that the Trust's title is somehow "tainted" so as to justify setting it aside on an exceptional basis.

[64] In these circumstances, the only conceivable route to the relief sought by the Applicant would be to demonstrate that:

- there was a prior valid sale to the Mojapelos that vested enforceable rights in them;
- the Trust took transfer with notice of those prior rights; and
- the setting aside of the Trust's deed and a consequential registration in favour of the Mojapelos is justified on double-sale principles and under section 6 of the Deeds Registries Act.

[65] The Applicant has not pleaded or proved such a case. There is no realistic prospect that an appeal court would reconstruct the matter along these lines.

THE "TWO TITLES" CONUNDRUM

[66] The conundrum raised with counsel in argument on leave illustrates why the Applicant's case is structurally defective.

[67] On its own formulation of relief, the Applicant asks this court, and implicitly an appeal court, to:

- declare void and set aside the municipal and MEC "decisions" underpinning the Trust transfer;
- compel the MEC and Registrar of Deeds to give effect to an alleged earlier Mojapelo transaction by registering the property in their names;

- without simultaneously seeking the cancellation of the existing Trust title in terms of section 6 of the Deeds Registries Act or establishing the statutory prerequisites for such cancellation.

[68] If that relief were granted, two consequences would follow:

- T[...]2, in the Trust's name, would remain on the deeds register, absent a cancellation order;
- a new deed would be registered in the names of the Mojapelos, purportedly evidencing their ownership.

[69] The Registrar of Deeds cannot lawfully maintain two subsisting titles reflecting different owners for the same immovable property. The Applicant's approach thus leads inexorably to a contradiction in the public register or presupposes relief (cancellation of the Trust's deed) that it has neither sought nor justified.

[70] Counsel was unable to explain how this contradiction could be resolved within the confines of the relief sought and the statutory scheme. That lacuna is fatal to the Applicant's case and demonstrates that even a successful appeal on one or more discrete points would not yield a coherent, executable order.

[71] An appeal with no viable remedial outcome does not meet the statutory threshold of a "reasonable prospect of success". Success must be assessed not in the abstract, but with reference to whether a proper, lawful and practical order could follow.

COMPELLING REASON FOR AN APPEAL

[72] Section 17(1)(a)(ii) permits leave to appeal where there is "*some other compelling reason*" for the appeal to be heard, including conflicting judgments.

[73] The Applicant has not identified any conflicting authority on the interpretation of ULTRA, the effect of section 2 conversions, the role of municipalities and MECs

under the post-1991 regime, or the application of double-sale and notice doctrines to former R293 properties.

[74] Nor does this case raise a novel constitutional question or an issue of general public importance of such a nature that, even absent prospects of success, it ought to be ventilated on appeal. The principles applied in the main judgment are rooted in established authority, including ULTRA, the Deeds Registries Act, *Rahube v Rahube*, the doctrine of notice, and the evidential standard for alleging fraud.

[75] The matter is undoubtedly important to the parties, but that is not, in itself, a “compelling reason” as contemplated by section 17(1)(a)(ii).

[76] I am therefore not persuaded that there exists any compelling reason to grant leave to appeal in the absence of reasonable prospects of success.

CONCLUSION AND ORDER

[77] Having considered all the grounds of appeal, the submissions of counsel, the record in the main application, and the prevailing legal position on leave to appeal, I am not satisfied that an appeal would have a reasonable prospect of success.

[78] The Applicant has not demonstrated:

- any misdirection on fact or law in the main judgment;
- that a court of appeal could reasonably come to a different conclusion on the evidence as it stands; or
- any compelling reason why an appeal should nevertheless be heard.

[79] In the premiss, the following order is made:

- a) The application for leave to appeal is dismissed.

b) The Applicant is ordered to pay the costs of the application for leave to appeal, such costs to include the costs of counsel on scale C.

G J DIAMOND
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

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DATE OF HEARING: 12 DECEMBER 2025.

DATE OF JUDGMENT: 6 FEBRUARY 2026.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 6 FEBRUARY 2025.