



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 15476/2023P

In the matter between:

FUNDISIWE GUGULETHU DLAMINI N.O.
DUDUZILE VINORY SIKAKANA N.O.
NOKULUNGA REJOICE NDODO CELE N.O.
MANDLA THOLITHEMBA MAKATINI N.O.
PATRICK NKOSENTSHA MTHETHWA N.O.
BHEKWAYINKOSI CELE N.O.
FUNDISIWE GUGULETHU DLAMINI N.O.
DUDUZILE VINORY SIKAKANA N.O.
NOKULUNGA REJOICE NDODO CELE N.O.
MANDLA THOLITHEMBA MAKATINI N.O.
PATRICK NKOSENTSHA MTHETHWA N.O.
BHEKWAYINKOSI CELE N.O.

FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT
FOURTH APPLICANT
FIFTH APPLICANT
SIXTH APPLICANT
SEVENTH APPLICANT
EIGHTH APPLICANT
NINTH APPLICANT
TENTH APPLICANT
ELEVENTH APPLICANT
TWELFTH APPLICANT

and

MZIKAYIFANI SYDNEY ZIBANI N.O.
PHALANE COMMUNITY TRUST
(Registration Number: IT338/2006/PMB)
MASTER OF THE HIGH COURT

FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT

In re interlocutory rule 30 matter between:

SIYAQHUBEKA FORESTS (PTY) LTD
(First Respondent in the main application)

APPLICANT

and

**PHALANE COMMUNITY TRUST
FUNDISIWE GUGULETHU DLAMINI N.O.
MANDLA MBEKI MHKWANAZI N.O.
DUDUZILE VINORY SIKAKANA N.O.
NOKULUNGA REJOICE NDODO CELE N.O.**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

In re:

**PHALANE COMMUNITY TRUST
FUNDISIWE GUGULETHU DLAMINI N.O.
MANDLA MBEKI MHKWANAZI N.O.
DUDUZILE VINORY SIKAKANA N.O.
NOKULUNGA REJOICE NDODO CELE N.O.**

**FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT
FOURTH APPLICANT
FIFTH APPLICANT**

and

**SIYAQHUBEKA FORESTS (PTY) LTD
MINISTER OF FORESTRY, FISHERIES AND
THE ENVIRONMENT
MINISTER OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT
DIRECTOR GENERAL OF AGRICULTURE, LAND
REFORM AND RURAL DEVELOPMENT
THE COMMISSION FOR RESTITUTION OF
LAND RIGHTS
MBONAMBI COMMUNITY TRUST
WESTERNSHORES COMMUNAL TRUST
DUKUDUKU LAND CLAIM COMMITTEE**

**FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT
FOURTH REPENDENT

SIXTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT**

ORDER

In the premises the following order is made:

The first respondent's application for leave to appeal is dismissed with costs on scale B.

JUDGMENT

Mathenjwa J

[1] This is a leave to appeal by Mr Zibani, who was the first respondent in the main application concerning the validation of the resolution passed by the majority of trustees. Leave to appeal is sought against the judgment and order handed down by this court on 19 August 2025, in which the court confirmed the resolution adopted by the majority of trustees of the Phalane Community Trust (the second respondent in the main application) (the Trust), appointing Mr Morne Coetzee as the attorney of record for the Trust.

[2] Though there were overlaps to the applicant's grounds of appeal, the grounds of appeal are summarised under four main grounds. First, that the court heard a matter that was part-heard before Siwendu J. Second, that the court erred in finding that this application was on all fours with *Shepstone and Wylie Attorneys v De Witt NO and Others*.¹ In that judgment, a trust deed provided for a free-standing majority clause and the court found that in a trust with a free-standing majority clause, the trustees need not take decisions unanimously but a majority decision of the trustees is binding. Third, the applicant contended that the court erred in finding that the alleged meeting of the beneficiaries reportedly vetoing the decision of the trustees to nominate Mr Morne Coetzee as the Trust's legal representative was illegal and invalid. Fourth, the applicant introduced a further ground in court, contending that the court erred in granting a costs order against the applicant personally, who was cited as a trustee in the main application.

[3] Leave to appeal is regulated by s 17(1) of the Superior Courts Act 10 of 2013, which provides that:

¹ *Shepstone and Wylie Attorneys v De Witt NO and Others* [2025] ZACC 14; 2025 (11) BCLR 1299 (CC) (*Shepstone and Wylie*).

'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 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.'

If leave to appeal is based on the prospects of success, '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'.² Furthermore, leave to appeal should be granted if there are compelling reasons which exist why the appeal should be heard, such as the interests of justice.³

[4] In his heads of argument and before court, counsel for the applicant submitted that the court erred in taking over the matter, which was a part-heard matter before Siwendu J. Furthermore, the court erred in dealing with the application to remove the application that was before Siwendu J from the roll and postpone it *sine die*, when it was not seized with the matter. Regarding the decision of the trustees dated 26 July 2025, it was submitted on behalf of the applicant that the order by Siwendu J directed the parties to mediate the dispute, not just to rush voting without first attempting to resolve the dispute.

[5] In his heads of argument and before the court, counsel for the respondents who were applicants in the main application disputed that the application before this court was a part-heard , in that Siwendu J had stood down the application that was before her to 8 July 2025 for the resolution of the dispute about the actual attorney who was appointed by the trustees as the legal representative of the Trust, which dispute subsequently gave rise to the application that was before this court. It was further contended on behalf of the respondents that the meeting of the beneficiaries

² *S v Smith* [2011] ZASCA 11; 2012 (1) SACR 567 (SCA) para 7.

³ *Nova Property Group Holdings Ltd and Others v Cobbett and Another* [2016] ZASCA 63: 2016 (4) SA 317 (SCA) para 8.

that was allegedly held on 28 July 2025 was not legally convened in terms of the trust deed.

[6] It should be pointed out upfront that the application before this court was another interlocutory application that arose from another application that was heard before Siwendu J. It is not in dispute that the application before Siwendu J was an interlocutory application regarding an irregular step in terms of rule 30 of the Uniform Rules. Since there were two attorneys who purported to act on behalf of the Trust, the court ordered that the trustees should meet by no later than 29 July 2025 to resolve and appoint a legal representative for the Trust.

[7] The trustees met on 26 July 2025, and all seven trustees participated in voting for the attorney who would represent the Trust. Six out of the seven trustees voted in favour of Mr Morne Coetzee representing the Trust and one trustee (Mr Zibani) voted in favour of Mr Zondo representing the Trust. All six majority trustees signed the resolution adopted for the appointment of Mr Morne Coetzee, except Zibani, who refused to sign the resolution. The respondents launched an interlocutory application seeking an order confirming the resolution of the trustees, since Zibani refused to sign the resolution. The interlocutory application was allocated to me, and I only dealt with the issue relating to the confirmation of the trustees' resolution. Therefore, the applicant's contention that this court dealt with a part-heard matter is unfounded.

[8] Regarding the adjournment of the rule 30 application that was before Siwendu J, it should be recognised that the application could not proceed before the dispute regarding the actual legal representative of the Trust that was before me was resolved. A court need not be seized with a matter before it orders the postponement of that matter. Therefore, it would be impossible for the application that was before Siwendu J to be heard before the issue regarding the actual attorney who was representing the Trust was resolved. Furthermore, the postponement of the matter that was before Siwendu J has no impact on the merits of the leave to appeal on the application that was before me.

[9] I now deal with the contention that the main application before me dealt with a unanimous decision and not a free-standing majority trust. Ironically, during his

address, I asked the applicant's counsel to refer the court to a provision in the trust deed which states that the Trust was a unanimous decision trust, but he failed to do so. On page 6, paragraph 9 of my judgment, I referred to clause 15.5 of the trust deed, which provides that any question will be decided by majority vote. I pointed out in my judgment that the Constitutional Court judgment of *Shepstone and Wylie*, which is binding on me, held that in a free-standing majority trust, trustees are required to act jointly but not unanimously. Therefore, there is no merit to this ground of appeal.

[10] The third main ground of appeal related to the alleged meeting of the beneficiaries that vetoed the decision of the trustees. On page 7, paragraph 12 of my judgment, I referred to clause 17.1 of the trust deed regarding the prescribed procedure for convening a general meeting. I pointed out that in this matter, the general meeting was not requested by the chairperson or deputy chairperson of the board of trustees, nor by any three trustees or petition by 50% of registered members. Ironically, at the hearing of the main application, the applicant's counsel did not dispute that there was no petition by registered members for a meeting to be convened. Instead, he submitted that the members who attended the meeting themselves should be considered as members who signed the petition. However, in the application for leave to appeal, the applicant's counsel contended that there was a petition for the meeting signed by registered members of the Trust. On page 8, paragraph 3 of my judgment, I pointed out that there was not even a single person who allegedly attended the meeting who deposed to a confirmatory affidavit confirming that such a meeting indeed took place and that a decision was taken by the registered members to overturn the majority decision of the trustees. Accordingly, there is no merit in this ground of appeal.

[11] This then brings me to the issue of costs. I have pointed out above that seven trustees, including Zibani, participated in the discussion regarding the appointment of an attorney for the Trust. Six trustees agreed on appointing Mr Morne Coetzee, but Zibani dissented. Mr Zibani refused to sign a resolution, which was adopted by the majority of trustees. The trustees would not have needed to launch the application and incur costs for the confirmation of the majority decision if Zibani had not refused to sign the trustees' resolution. Even after the trustees had instituted the court

application, Mr Zibani opposed the application in his capacity as a trustee and beneficiary, without providing a single affidavit from either the registered members or beneficiaries of the Trust in support of his version. Therefore, the Trust should not be burdened with costs in circumstances where the applicant individually and unnecessarily caused the Trust to incur these costs in this litigation.

[12] I am of the view that there are no prospects of success to this leave to appeal. The Constitutional Court in *Shepstone and Wylie* laid down the principle regarding the effect of a majority decision in a free-standing majority trust. That decision is binding on all courts. Therefore, there are no compelling reasons, nor is it in the interests of justice, to grant leave to appeal in this application. For these reasons, the application for leave to appeal must fail with costs on scale B.

[13] In the premises, the following order is made:

The first respondent's application for leave to appeal is dismissed with costs on scale B.

MATHENJWA J

Appearances

Applicant's counsel:	Mr E Braga
Instructed by:	Morne Coetzee Attorneys Pretoria
Respondents' counsel:	Mr S Mdladla
Instructed by:	Zondo Sokotshane Attorneys Durban
Date of hearing:	3 February 2026
Date of judgment:	12 February 2026