



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable
Case no: 4630/2025

In the matter between:

MAFUBE LOCAL MUNICIPALITY

FIRST APPLICANT

JB SELEPYANE

(in her capacity as the duly appointed
Municipal Manager of Mafube Local Municipality)

SECOND APPLICANT

T MOTSOENENG

(in his capacity as the duly
Appointed Executive Mayor of Mafube Local Municipality)

THIRD APPLICANT

**MEC CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

FOURTH APPLICANT

and

JERRY CAR BRANDING

RESPONDENT

Neutral citation: *Mafube Local Municipality and Others v Jerry Car Branding (Pty) Ltd*
(4630/2025) [2026] ZAFSHC 38 (2 February 2026)

Coram: MOLITSOANE J

Heard: 28 November 2025

Delivered: 2 February 2026

Summary: Leave to appeal – whether there are prospects of success on appeal or there are other compelling reasons to grant leave to appeal – s 17(1) of the Superior Courts Act 10 of 2013 – principles restated.

ORDER

The application for leave to appeal is dismissed with costs, such costs to include the costs of counsel at scale B.

JUDGMENT

Molitssoane J

[1] This is an application for leave to appeal the judgment and order of De la Rey AJ, delivered on 11 September 2025. The acting stint of De la Rey AJ having ended, I am now seized with this application. The applicants in this application for leave to appeal are the first to third, and fifth respondents in the main application.

[2] The judgment of this Court is assailed on a number of grounds. First, that the order granted is not supported by a clear contractual right and was legally incompetent. Under this heading, it is contended that clause 8 of the User Agreement provides that the respondent would be entitled to pump out the effluent from the second dam and to distribute it according to his preference. Importantly, a point is made that the interruption of the first applicant's electricity supply to the Namahadi sewerage plant also interrupted the electricity supply from the second dam, which is situated on the respondent's premises to the respondent's irrigation system. But the court in its judgment held that the 'applicant made it clear that in its founding affidavit that its right to receive the treated effluent is based on and has always been based on the user agreement'. The finding of the court cannot be faulted in this regard.

[3] Importantly, it is contended that this Court did not take into account that clause 22 of the notarial deed of lease between the first applicant and the respondent provided that the landowner would be responsible for any electricity costs to pump the water out of the dam to irrigate his plants. This Court, in my view, correctly found that the notarial deed of lease was void on the basis that it was never registered. The applicants do not attack this

finding of voidness but contend that, notwithstanding this, the court still had to consider the particulars pointing to the intention of the parties. I am unable to agree that the court had to consider the terms of the instrument it had found to be *pro non scripto*. There is no reason to find fault with the finding of the court.

[4] Second, that the legal requirements for an interdict had not been met. On this point, it is contended on behalf of the applicants that the respondent had an alternative relief. It is said that the respondent can merely engage Eskom and request them to provide electricity to his premises, or alternatively if he has an existing Eskom service point, phone a private technician to connect the electricity from the second dam to his premises on such current system. This reasoning is, in my view, flawed. It does not take into account the history of the relationship between the parties. The first respondent cannot abdicate his constitutional obligations and expect the respondent to act in such a way that would relieve it of its constitutional duties. The court held that the applicant's duty to ensure that its sewerage system, including the two sewerage pumps referred to in the application were maintained and kept operational had been reaffirmed numerous times in this Court.

[5] Third, the applicant raised the issue of not being in a position to pay Eskom for the supply of the electricity due to its financial situation. That argument was correctly rejected. I align myself with the reasoning of the court and nothing further needs be said. The applicants persist with this argument and impermissibly tried to bolster their case by attempting to introduce new evidence by way of attaching further new documents on the application for leave to appeal. This conduct is unacceptable. The court further dealt with the remainder of the grounds raised fully in its judgment and there is no need to rehash them.

[6] Applications for leave to appeal are regulated by s 17(1) of the Superior Courts Act 10 of 2013. It reads as follows:

'(1) 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.'

[7] In *Smith v S*,¹ the Supreme Court of Appeal, relying on *S v Mabena and Another*,² remarked:

'What the test of reasonable prospects of success postulates is 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. In order to succeed, therefore, 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. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[8] I have carefully considered the judgment of the court as well as the submissions of the parties. I am of the view that another court would not come to a different conclusion, nor are there compelling reasons why an appeal should be heard by another court.

[9] I therefore, make the following order:

The application for leave to appeal is dismissed with costs, such costs to include the costs of counsel at scale B.



P E MOLITSOANE
JUDGE OF THE HIGH COURT

¹ *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 SCA para 7.

² *S v Mabena and Another* [2006] ZASCA 178; [2007] 2 All SA 137 (SCA); 2007 (1) SACR 482 SCA para 22.

Appearances

For the applicants: M Froneman
Instructed by: The State Attorney,
Bloemfontein

For the respondent: PC Ploos Van Amstel
Instructed by: Corne Boshoff
c/o Phatshoane Henny Inc.,
Bloemfontein.