



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

Unreportable

Case number: 1970/2024

In the matter between:

ELIZABETH CHRISTINA BEUKES N.O.

FIRST APPLICANT

[In her capacity as Trustee of the Beukes
Familie Trust (IT748/04)]

SARAH PETRONELLA MEIRING

SECOND APPLICANT

(nee BEUKES) N.O.

[In her capacity as Trustee of the Beukes
Familie Trust (IT748/04)]

and

MATTHEUS GERHARDUS BEUKES N. O

FIRST RESPONDENT

[In his capacity as Trustee of the Beukes
Boerdery Trust (IT1097/99)]

PETRUS JACOBUS VENTER N.O.

SECOND RESPONDENT

[In his capacity as Trustee of the Beukes
BoerderyTrust (IT1097/99)]

In re:

Case number: 1970/2024

In the matter between:

ELIZABETH CHRISTINA BEUKES N.O.

FIRST PLAINTIFF

[In her capacity as Trustee of the Beukes
Familie Trust (IT748/04)]

SARAH PETRONELLA MEIRING

SECOND PLAINTIFF

(nee BEUKES) N.O

[In her capacity as Trustee of the Beukes
Familie Trust (IT748/04)]

and

MATTHEUS GERHARDUS BEUKES N.O

FIRST DEFENDANT

[In his capacity as Trustee of the Beukes
Boerdery Trust (IT1097/99)]

PETRUS JACOBUS VENTER N.O.

SECOND DEFENDANT

[In his capacity as Trustee of the
Beukes Boerdery Trust (IT1097/99)]

Neutral citation: *EC Beukes N.O and Another v MG Beukes N.O and Another*
(1970/2024) [2026] ZAFSHC 50 (11 February 2026)

Coram: BOONZAAIER AJ

Heard: 26 January 2026

Delivered: 11 February 2026

Summary: Court dismissed an application to amend and join co-trustees – held that the failure to cite all trustees of a trust and non-service on trustees in their official capacity renders the proceedings fatally defective.

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ORDER

The application for leave to appeal is dismissed, with costs. Counsel's fees to be taxed on scale B

JUDGMENT

[1] The Applicants seek leave to appeal the judgment and order of this Court handed down on 23 October 2025. Leave is sought to the full bench on the grounds embodied in its notice of application for leave to appeal dated 13 December 2025. The Respondents opposed the application. Leave to appeal is sought in terms of ss 17(1)(a)(i) and 17(1)(a)(ii) of the Superior Courts Act 10 of 2013. The applicants rely on a number of grounds which are discussed in their notice of appeal. Section 17(1) of the Superior Courts Act provides that leave to appeal may only be granted where the Judge or Judges concerned are of the opinion that —

'(a) (i) the appeal would have a reasonable prospect of success; (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.'

[2] The primary case made out in support of the application is that the court misdirected itself by failing to have regard to the following:

'1. That the Honourable Court erred, alternatively misdirected itself in dismissing the Applicants' application for leave to amend, in terms of Rule 28(4), with costs and finding that it is not necessary to adjudicate the application to strike out, in terms of Rule 6(15).

2. The Honourable Court erred, alternatively misdirected itself in finding that failing to cite all trustees of a Trust, render the proceedings fatally defective, as the Trust is not properly before Court whilst the Trust, as represented by two of its trustees, knew about and in fact defended the action, which could only transpire if all the trustees resolved to defend the action.

3. The Honourable Court erred, alternatively misdirected itself in concluding that the defendant trust as represented by two (2) of its trustees was "*not before Court – in causa a misjoinder*" and that no finding or judgment against the Respondents – two Trustees representing the Trust, would be valid.

4. The Honourable Court erred, alternatively misdirected itself, in dismissing the applicant for amendment where all the trustees were and ought to have been aware of the action and the application for amendment in absence of any prejudice to the trustees to be joined.

5. The Honourable Court erred, alternatively misdirected itself, in finding that additional trustees, cannot be added to proceedings through amendment in terms of Rule 28, simply because the trustees who were cited objected to the amendment and in doing so preferred form over substance.

6. The Honourable Court erred, alternatively misdirected itself, in finding that a notice of amendment must always be served on a party who is to be joined, whilst in the circumstance of this case, where the parties are aware of the application and no prejudice can possibly arise from the amendment (the defendants raise the fact that 2 other trustees were also authorised who had not been joined to the proceedings) it was not necessary to serve the application on the trustees to be joined and no prejudice existed.

7. The Honourable Court erred, alternatively misdirected itself in finding that the adding of two further trustees to the action, to cite all the trustees of the Beukes Boerdery Trust, will cause prejudice to the Beukes Boerdery Trust.'

[3] The applicants contend that the appeal would have reasonable prospects of success and the test is simply whether there is any reasonable prospect of success in an appeal. Leave to appeal in terms of s 17(1)(a)(ii) to the full bench should therefore, be granted.

Leave to Appeal

[4] Counsel on behalf of the applicant contends that in *Ramakatsa and Others v African National Congress and Another*¹ it was stated that:

'[10] Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that "but here too the merits remain vitally important and are often decisive". I am mindful of the decisions at high court level debating whether the use of the word "would" as oppose to "could" possibly means that the threshold for granting the appeal has been raised. If a reasonable

¹ *Ramakatsa and Others v Arican National Congress and another* [2021] ZASCA 31.

prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success 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. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

[5] I am also mindful of what the SCA in *Smith v S*,² per Plasket AJA, had occasion to consider what constituted reasonable prospects of success in section 17(1)(a)(i) and held: '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 Respondent 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.'³

[6] As such, in considering the application for leave to appeal, it is crucial for this court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the full bench in this instance, will – not might – find differently on both facts and law. It is against this background that I consider the most pivotal grounds of appeal.

[7] Central to this issue is the settled principle in South African law that a trust has no juristic personality and therefore cannot sue or be sued in its own name; a trust is not a separate juristic person; it is a legal institution *sui generis*. The trust itself cannot sue or be sued in its own name unless otherwise provided by statute. Therefore, trustees must be cited *nomine officio*. Because a trust lacks legal personality, any action *by* or *against* a trust must be brought by or against its trustees in their representative capacities (*nomine officii*).

² *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA).

³ *Ibid* para 7.

[8] The principle of joinder of trustees is that all trustees must be joined.⁴ The settled common-law position is that all trustees must be joined in litigation where a trust is sued or sues, unless the trust deed or a resolution expressly authorises one trustee to act on behalf of all.⁵ This rule embodies the traditional requirement that trustees act jointly in administering trust affairs and in litigation.

a. Trustees must be cited by name in their representative capacities. Non-joinder of trustees is critical relevant as a necessary party. Under rule 10 of the Uniform Rules of Court and common law authority, a party is a necessary party if:

- i) the person has a *direct and substantial interest* in the subject of the litigation;
- ii) the court cannot make a binding order without affecting that person's interests; or
- iii) failure to join may prejudice the absent person;
- iv) In the context of a trust, each trustee has such an interest because the trust estate and its administration are indivisibly vested in the trustees.

[9] There is a limited exception where one or more trustees act on behalf of all, such as instances where the trust deed expressly permits it, or a resolution by all trustees empowers one trustee to litigate on behalf of the board. However, absent such authority, the general rule applies. The impact of a non-joinder is that a failure to cite all trustees can render the proceedings procedurally defective and excipiable, and the possibility could very well exist that the proceedings are rendered fatally defective if a necessary party is missing. Whether the defect is *curable* (e.g. by amendment) or *fatal* often depends on whether the absent trustees are prejudiced or have a direct and substantial interest. The fact that the two cited trustees knew of, and defended, the proceedings does not substitute for proper joinder of all trustees. The court still has a discretion. The applicants' contention that knowledge and defence of the proceedings by two trustees validates the summons is not legally sufficient in the absence of proper authority or joinder.

[10] In the present matter, the court held that a notice of intention to amend should have been served on the trustees sought to be joined, particularly where the amendment entails the joinder of a necessary party. This requirement is not a mere formality but flows from the *audi alteram et partem* principle and the rules governing joinder and amendment. The fact that the parties sought to be joined were allegedly aware of the proceedings, do

⁴ *Bayer Trust v Bayer and Others* [2024] ZAWCHC 404.

⁵ *T.T v D.T.N.O and Others* [2024] ZAFSHC 7.

not dispense with the requirement of formal service. Knowledge of proceedings is not equivalent to being properly cited as a party, nor does it confer upon such party the procedural rights attendant upon joinder, including the right to object to the amendment, raise defences, or place relevant facts before the court. In circumstances such as these – where the trust has no juristic personality and all trustees are required to be joined in their representative capacities – the amendment sought was not merely cosmetic but went to the very identity of the parties before court. The proposed amendment therefore necessitated service of the Rule 28 notice on the trustees sought to be joined.

[11] The respondents contend that the applicants have provided no explanation for their failure to cite and serve the remaining trustees. The applicants, however, submit that only two trustees were initially cited because a prior letter of authority indicated that there were only two trustees; they only became aware of the existence of the other two trustees after the special plea had been filed. In response, the respondents argue that the Master of the High Court had already issued the letter of authority prior to the issuing of the summons, and therefore the applicants' explanation is untenable.

Prejudice

[12] The applicants' contention that no prejudice could arise is misplaced. The applicants contend that the trustees knew of the matter and they even opposed it. Prejudice in the context of joinder is not confined to actual harm suffered, but includes the deprivation of a party's right to be heard before being bound by litigation. Absent proper service, the court would be unable to make a binding order against the absent trustees, thereby rendering the proceedings irregular and potentially unenforceable. Hence, the court found that failure to serve the notice of intention to amend on the trustees sought to be joined was fatal to the amendment application, and that the procedural defect could not be cured by the mere assertion that the parties were aware of the proceedings or that no prejudice would ensue.

Appealability of the matter

[13] The respondents further submit that refusing a rule 28 amendment is ordinarily interlocutory and not appealable, because it does not finally dispose of the main dispute. The defect can be cured with a later amendment and a joinder which can be served on all the parties. The applicants, on the other hand, argued that the matter is, in fact,

appealable and referred to *Media 24 (Pty) Ltd v Nhleko and Another*⁶ (*Media24*) which is similar to this matter. Here, the Supreme Court of Appeal (SCA) grappled not only with the merits of a *refusal of an application to amend* a plea and the underlying civil-procedure principles, but also with whether that refusal was *appealable*.

[14] While the judgment does not directly address a joinder issue (i.e. the appealability of refusal to join a party), its reasoning on appealability of procedural rulings is useful for similar contexts. In the high court, the application by Media 24 to amend its plea in a defamation action was refused, largely because the court found that the proposed amended plea was vague, evasive, and sought to justify the underlying article rather than respond to the particulars of claim. That refusal was treated (in the High Court) as definitive of the issues to be litigated and such that the defence could not be properly ventilated. By framing the high court's decision as final in effect – because it effectively would preclude the defence at trial – the SCA implicitly confirmed that the order was appealable as a final procedural determination affecting substantive rights.

Conclusion

[15] In South African procedure, an order refusing to allow an amendment can be appealable if it is final in effect and definitive of rights. The SCA's approach in *Media24* confirms that such procedural refusals, when they go to the core of litigants' rights to present their case, are not mere interlocutory rulings but appealable orders. This court's order was final in effect because the defect cannot be remedied within the same proceedings, hence the matter is appealable. Regarding the amendment, even if it had been granted and the trustees were permitted to be joined *nomine officii*, the summons was not served on all the parties, and the amendment therefore remained defective. A reasonable prospect of success was not established for leave to appeal to be granted.

Order

In the circumstances, the application for leave to appeal is dismissed, with costs.
Counsel's fees to be taxed on scale B.

⁶ *Media 24 (Pty) Ltd v Nhleko and Another* [2023] ZASCA 77.

A black rectangular box redacting a signature. Above the box, the letters 'A 11' are handwritten. Below the box, there is a horizontal line with a cursive signature written across it.

AS BOONZAAIER

ACTING JUDGE OF THE HIGH COURT

Appearances

On behalf of the Applicant:
Instructed by: GSJ van Rensburg
Van den Berg Van Vuuren Attorneys
Bloemfontein

On behalf of the Respondent:
Instructed by: H Kriel
Hugget Retief Attorneys
Bloemfontein