



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case Number: 2026-028582

In the matter between:

LOKOMOTIC (PTY) LTD

First Applicant

MOLOKO CLIFFORD MOKOENA

Second Applicant

and

LEKWA-TEEMANE LOCAL MUNICIPALITY

First Respondent

THOBILE M BUILDING

CONSTRUCTION (PTY) LTD

Second Respondent

**SHERIFF OF THE COURT FOR THE
DISTRICT OF CHRISTIANA**

Third Respondent

**STATION COMMANDER,
CHRISTIANA POLICE STATION,
NORTH WEST:**

SOUTH AFRICAN POLICE SERVICES

Fourth Respondent

Coram: Petersen ADJP

Heard: 03 March 2026

Judgment reserved: 03 March 2026

Delivered: This judgment was handed down electronically, circulated to the applicant's legal representative and the second respondent via email, and uploaded to CaseLines and released to Saflii. The date and time for the handing down of the judgment are deemed to be 10h00 on 04 March 2026.

Summary: Application for leave to appeal — Civil Procedure — Superior Courts Act 10 of 2013 — application to appeal final relief granted for *rei vindicatio* — Applicants challenged attribution of conduct, non-joinder of a necessary party, and the granting of final relief on alleged disputed facts — attribution of unlawful conduct (erecting a fence) supported by direct evidence of an independent contractor despite bare denials by applicants — non-joinder of Department of Education legally untenable as a town planning designation does not confer ownership or possessory rights necessary for *rei vindicatio* proceedings — rejection of applicants' version justified under exceptions to the *Plascon-Evans* rule where denials are demonstrably untenable or contradicted by credible evidence — conduct of applicants deemed a 'textbook example of self-help' — self-help is inimical to the rule of law and warrants judicial disapproval — punitive costs originally awarded based on *mala fide* conduct, including contemptuous WhatsApp communications toward legal representatives and advancing false versions under oath — application for leave to appeal dismissed for lack of reasonable prospects of success under s 17(1)(a)(i) of the Superior Courts Act — costs of the application awarded to respondent on party-and-party scale (Scale C).

JUDGMENT IN THE APPLICATION FOR LEAVE TO APPEAL

Petersen ADJP

Introduction

[1] This is an application for leave to appeal against the whole of my judgment and order handed down on 17 February 2026. The applicants, who were the first and second respondents in the main application, appear in person. The respondent opposes the application of the Lekwa-Teemane Local Municipality (the Municipality).

[2] In the main judgment, I granted final relief to the Municipality, finding that the respondents had acted unlawfully by dispossessing it of its property through acts of self-help.

The test for leave to appeal

[3] The application is governed by s 17(1) of the Superior Courts Act 10 of 2013, which provides that leave to appeal may only be given where the judge is 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;...’

[4] It is now trite that this test is more stringent than the previous test of ‘reasonable prospects that another court *might* come to a different conclusion.’ The applicant must satisfy the court that there is a sound, rational basis for the conclusion that there are prospects of success. A mere possibility of success, or that the case is arguable, is insufficient.¹

[5] I must therefore apply a ‘dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different from that of the trial court.’²

The grounds of appeal

[6] The applicants’ application for leave to appeal sets out several grounds. I will address each of the material grounds in light of the findings in the main judgment.

Ground 1: Attribution of Conduct

[7] The applicants argue that the court erred in finding that they erected the fencing, despite their denials and the absence of direct evidence linking them to it. The record contradicts this submission. In the main judgment, I found that the respondents’ version consisted of bare denials, which did not create a genuine dispute of fact. I held that, on a holistic consideration of the papers, ‘there is no real or material dispute on any facts about the rei vindicatio.’

[8] This finding was based on the totality of the evidence, including the confirmatory affidavit of Mr Moseswa and the affidavit of Mr Aobakwe Polori,

¹ *The Mont Chevaux Trust v Tina Goosen* 2014 JDR 2325 (LCC); *S v Smith* 2012 (1) SACR 576 (SCA) at para 7.

² *S v Smith* *supra*.

which was placed before me in the replying papers. Mr. Polori stated under oath that he was personally engaged and paid by the second applicant, Mr. Mokoena, to erect the fence. In light of this evidence, the respondents' denials were insufficient to raise a triable issue. An appeal on this ground does not have reasonable prospects of success.

Ground 2: Non-Joinder of a Necessary Party

[9] The applicants contend that the Department of Education was a necessary party and should have been joined, based on the view that the land is intended for a school. This ground is legally untenable. The cause of action was the rei vindicatio. The only parties necessary for its proper adjudication are the owner, the Municipality, and the person in possession, the respondents.³ In the main judgment, I noted that the respondents had produced 'no evidence of a legal right to the property that would justify their blockade.' The Department of Education has no legal interest in the ownership of the land. A town planning designation does not confer a right of ownership or possession. This ground has no reasonable prospects of success.

Ground 3: Final Relief on Disputed Facts

[10] The applicants argue that final relief was granted in the motion proceedings despite genuine factual disputes. This argument overlooks the established exceptions to the *Plascon-Evans* rule, which I appreciate that the second respondent, as a lay person, is not acquainted with. In the main judgment, I considered this rule and noted that a court is entitled to reject a respondent's version where it consists of bare denials or is demonstrably untenable.

³ Chetty v Naidoo 1974 (3) SA 13 (A).

[11] I found that the respondents' version fell into this category. Their denial was contradicted by the direct evidence of Mr. Polori, which the Court accepted. Consequently, there was no genuine dispute of fact requiring referral to oral evidence or trial. In my view, the matter was correctly decided on the papers.

Grounds 4, 5, 6, and 7: Spoliation, Plascon-Evans, Overbroad Relief, and Punitive Costs

[12] The remaining grounds are similarly without merit. The relief granted was intended to remedy the respondents' unlawful conduct and prevent its recurrence. It was not overbroad. The essence of the relief was the removal of the fence and padlocks and the restoration of the status quo ante before the erection of the fence. The applicants elected to vigorously oppose this relief, being sidetracked by what appears to be an alleged history of political score-settling with some of the dramatis personae in the application. As indicated to the second applicant, this Court cannot become embroiled in those issues, which the second applicant can seek to vindicate through legal remedies that he may be advised are at his disposal. This Court, as in the main application, is constrained to the papers in this application.

[13] Regarding punitive costs, the award was considered and reasoned in the main judgment. The applicants contend that I erred in awarding costs on an attorney-and-own-client punitive scale in the absence of mala fides, dishonesty, or unlawful self-help on their part. This complaint, in essence, is that they were wrongly punished for conduct they did not commit.

[14] The factual premise of this ground of appeal is fundamentally flawed. In the main judgment, I made specific factual findings about the respondent's conduct

which directly informed the costs order. I, in fact, contrary to the second applicant's protestations that he has not resorted to self-help, held that the applicants' conduct amounted to self-help.

[15] I further noted that their response to the respondent's attorney demonstrated a lack of regard for the legal process and that such conduct warranted a mark of disapproval from the Court. The Constitutional Court in *Public Protector v South African Reserve Bank*⁴ confirmed that punitive costs are appropriate in certain circumstances. This ground does not have reasonable prospects of success.

[16] It is apposite to restate the aforesaid findings, as amply supported by the record which was placed before me. I held that the applicants' conduct was a 'textbook example of self-help, which the law abhors'. This finding was based on the undisputed facts that the applicants, without any legal right, physically took possession of the Municipality's property by erecting a fence and padlocks, thereby excluding the lawful contractor. The Constitutional Court's decision in *Chief Lesapo v North West Agricultural Bank*⁵ was cited to make it clear that self-help is inimical to the rule of law and cannot be countenanced. The act of self-help alone is a serious wrongdoing that a court is entitled to mark its disapproval of through a costs order.

[17] I further noted that the applicants' WhatsApp response to the respondents' applicant's attorney demonstrated a lack of appreciation for the legal process. The founding affidavit attached screenshots of a WhatsApp exchange in which the second Applicant, Mr. Mokoena, responded to the Municipality's letter of demand with messages stating 'Mxm', 'Go to hell', and 'I am busy drinking alcohol, I don't have time for FIFA'. This was not the conduct of a person

⁴ *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC).

⁵ *Chief Lesapo v North West Agricultural Bank* 2000 (1) SA 409 (CC).

genuinely seeking to resolve a dispute, but rather a display of contempt for the legal process and for the Municipality's attempt to resolve the matter without litigation. This is precisely the vexatious and mala fide conduct that courts have historically sanctioned with a punitive costs order.

[18] The applicants' demonstrably false denials further justified the award of punitive costs. As detailed in response to *Ground 1*, the applicants' version that they had no involvement in the fencing was an untruth, completely contradicted by the affidavit of Mr. Polori, an independent witness whom the second applicant had personally hired and paid to erect the fence. The second applicant in the argument before me made the point that people 'lie' in affidavits daily, to the exclusion of himself in this matter. Yet the second applicant, with evidence on oath adduced by the respondent, could not gainsay that evidence with cogent evidence. A litigant who advances a false version under oath and persists in it not only fails to create a genuine dispute of fact but also engages in conduct that is an abuse of the court process.

[19] The applicants' complaint that they were wrongly punished for conduct they did not commit is directly contradicted by Mr. Polori's evidence. The factual finding that the second applicant was the architect of this unlawful scheme is the very foundation of the costs order. An appeal court would not, on this record, be able to interfere with that finding.

[20] This ground of appeal, therefore, has no reasonable prospect of success.

Conclusion

[21] The applicants have failed to satisfy the test in s 17(1)(a)(i) of the Superior Courts Act. They have not demonstrated that an appeal would have a reasonable

prospect of success. The evidence supported the factual findings, and, in my view, the law was correctly applied.

Costs

[22] The Municipality has succeeded in opposing this application. The general rule is that costs follow the result. Unlike my order in the application under s 18(3) of the Superior Courts Act, where I exercised my discretion in favour of the applicants by ordering no costs, this application is different. There is no reason to depart from the general rule. The application for leave to appeal is without merit, and a cost order in favour of the Municipality is justified.

Order

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

1. The application for leave to appeal is dismissed.
2. The applicants are ordered to pay the costs of this application on a party-party scale (Scale C), jointly and severally, the one paying the other to be absolved.



A H PETERSEN

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

Appearances:

For the First and Second

Applicants:

In Person

For the First Respondent:

Adv S M Tisane

Instructed by:

Zisiwe Attorneys

Mahikeng