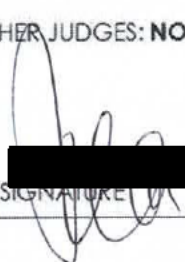




IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 020919/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12/3/2026 DATE	 SIGNATURE

ELLIE MASESI DHLUDHLU

FIRST APPLICANT

ZAF KHAN ATTORNEYS

SECOND APPLICANT

AND

BRITTANIA LEKUKAMETSE

RESPONDENT

JUDGMENT

(LEAVE TO APPEAL)

Introduction

1. This is an application for leave to appeal in terms of Section 17 of the Superior Courts Act 10 of 2013.
2. On the 31st of January 2025, I handed down judgment in favour of the Respondent, Mrs Brittanina Lehukametse Radebe and ordered that Ms Ellie Masesi Dhludhlu be removed as executrix testamentary in the estate of the late Titus Mandlakayise Radebe. I further made an order that the attorneys firm of Zaf Khan repay the amount of R450 000 to the estate of the late Titus Mandlakayise Radebe and further that the first and third respondents pay costs of the application on scale C.
3. At the time that the application for leave to appeal was served and filed in February 2025, I had already taken retirement as a permanent judge. This application was only brought to my attention during my stint as acting judge in the first term of 2026, hence the delay.

Background facts

4. The background facts leading up to the application have been set out chronologically in my judgment from paragraphs 2 to 48. I do not find it necessary to traverse same.
5. It is common cause that Mr Brittanina Lehukametse Radebe and the deceased were married in community of property, which marriage was still in existence at the time of the death of her

husband, the late Titus Mandlakayise Radebe.

6. It is also common cause and not in dispute that at the time of the death of the deceased, he had been living with the first applicant for a number of years as husband and wife, out of which relationship a child was born.
7. The deceased, unbeknown to his lawful wife, executed a will in which he not only appointed Ellie Dhludhlu as executrix, but also bequeathed his estate to her and their son.

The application for removal of Ellie Dhludhlu as executrix testamentary

8. The basis for removal of the testamentary executrix is that she has, on numerous occasions, despite being requested, failed to comply with queries from the Office of the Master. This is evident from the numerous letters that I have made reference to in my judgment. The final nail is when the Master in his report dated the 3rd of October 2024, made reference to non-compliance by the executrix.
9. That report was referred to her legal representatives in a directive that this Court issued, calling upon the applicant to comment thereon. Still, no response was received. Counsel for the executrix, in addressing this Court, informed the Court that he was not aware of that directive and yet proceeded to blame this Court for entering into evidence contents of that report without allowing the applicant an opportunity to adduce

evidence to the contrary. I reject this unfounded conclusion with the contempt it deserves.

The findings against the third respondent

10. The deceased informed his lawful wife that he had paid an amount of R450 000.00 to Zaf Khan Attorneys as per their settlement. That amount was paid to the attorneys on the 11th of February 2016. It is therefore strange that the following day, being the 12th of February 2016, he goes to Johannesburg to sign an acknowledgment debt for the same amount.

The grounds of appeal

11. The applicant's grounds of appeal are extensive and may be summarised into the following categories, which are as follows:

11.1. Firstly, that the Court erred in allowing a report filed by the Master on the 3rd of October 2024, to be entered into evidence without having given the respondents an opportunity to adduce evidence to the contrary.

11.2. Secondly, that the Court erred in finding that the executrix failed to comply with the queries raised by the Master.

11.3. Lastly, that the Court erred in finding that the third respondent, Mr Zaf Khan had to pay the amount of R450 000 to the estate.

The legal framework

12. Section 17(1)(a) of the Superior Court Act 10 of 2013 provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion on that:

- 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.”

13. Bertelsmann J in the matter of *Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others* (LCC14R/2014) dated 3 November 2014, held as follows:

“It is clear that the threshold for granting leave to appeal against a judgment of the High Court has been raised in the new Act. The former test, whether leave to appeal should be granted, was a reasonable prospect that another Court might come to a different conclusion. The use of the word ‘would’ in the new statute indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.”

14. The decision referred to above has been cited in many judgments with approval, more specifically by the SCA in *Notshokovou v S* (157/17) [2016] ZASCA 112 (7 September

2016) and *MEC for Health, Eastern Cape v Mkhita and Another* (1221/15) [2016] ZASCA 176 (25 November 2016).

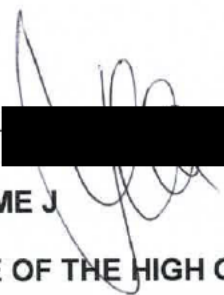
15. It is therefore incumbent on the applicant to satisfy this Court that there are reasonable prospects that the appeal would succeed or that there are compelling reasons why the appeal should be heard.

Evaluation

16. I have earlier in this judgment already dealt with the strong and uncontested evidence against the applicant, namely that she failed to respond to the numerous queries raised by the Master and thus made herself guilty of failing to meet the requirements of the Act in executing her duties as an executor.
17. Secondly, I have included in my main judgment, and in this one also that the payment of R450 000.00 to Zaf Khan was made prior to the execution of the so-called acknowledgement of debt, which supports evidence of Mrs. Radebe that the deceased had called her and told her that he made payment of R450 000.00 to settle her half share in the estate.
18. The applicants have, in my view, failed to demonstrate that there are prospects of the appeal succeeding before another Court. The threshold stated in Section 17(1)(a)(i) of the Superior Courts Act has not been met. In the result, I make the following order.

ORDER

1. The application for leave to appeal is dismissed.
2. There is no order to costs as the application was not opposed.



MAKUME J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearance

For the Plaintiff:

Adv Coleman

For Defendant :

M L Mateme Inc