



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

Not reportable

Case no: 2259/2019

In the matter between:

IAN REDELINGHUYS

APPLICANT

and

MOQHAKA LOCAL MUNICIPALITY

RESPONDENT

In re:

In the matter between:

IAN REDELINGHUYS

PLAINTIFF

and

MOQHAKA LOCAL MUNICIPALITY

FIRST DEFENDANT

G.R. MAKOPO PROJECTS CC

SECOND DEFENDANT

MEC: POLICE, ROADS & TRANSPORT,

FREE STATE PROVINCE

THIRD DEFENDANT

Neutral citation: *Redelinghuys v Moqhaka Local Municipality* (2259/2019) ZAFSHC
97 (19 March 2026)

Coram: REINDERS J

Heard: 10 October 2025

Delivered: This judgment was handed down in open court on 19 March 2026 and
circulated electronically to the parties' representatives by email and released to SAFLII.

Summary: Application for leave to appeal – absolution from the instance.

ORDER

1 Leave is granted to the Applicant to appeal to the Full Bench of the Free State High Court against the order of the Honorable Mgudlwa AJ on 18 June 2025 absolving the First Defendant from the instance.

2 The costs of this application will be costs in the appeal.

JUDGMENT

Reinders J

[1] This is an application for leave to appeal against the orders granted by the Honorable Mgudlwa AJ on 18 June 2025. His acting stint had come to an end and the application was allocated to me. Apologies are tendered for the delay in handing down this judgment.

[2] The applicant is the plaintiff in an action instituted against the three defendants cited above. On 18 June 2025, the trial judge granted an application for absolution of the instance in respect of the first defendant (the respondent in this application). A similar application by the third defendant was dismissed. The applicant applies for leave to appeal against the order absolving the first defendant from the instance, which application is opposed by the latter.

[3] The principles in respect of an application of this nature, is trite. An applicant is required to satisfy the test for leave to appeal under s 17(1) of the Superior Courts Act 10 of 2013 and the subsequent case law in respect of the interpretation thereof, namely whether there are reasonable prospects that a different conclusion would be reached by a court of appeal.¹ Counsel for both parties filed able heads of argument for which I am indebted. Oral arguments were also advanced virtually before me.

¹ *Acting National Director of Public Prosecution and Others v Democratic Alliance; In re Democratic Alliance v Acting National Director of Public Prosecution and Others* [2016] ZAGPPHC 489 regarding reasonable prospects of success.

[4] The parties were in agreement on the test to be applied in an application for absolution. The trial judge quoted *Gordon Lyod Page & Associates v Rivera and Another*² wherein the Supreme Court of Appeal held:

'The test for the absolution to be applied by a trial court at the end of the plaintiff's case was formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409G-H in these terms: ". . . (W)hen absolution from the instance is sought at the close of the plaintiff's case, the test to be applied is not whether the evidence led by the plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff."³

[5] The test as enunciated is a simple test, being whether evidence was adduced upon which a court acting reasonably could find in the favour of the plaintiff. It is noteworthy that the test does not require that the evidence be sufficient to make a finding that the court will or should find in favour of the plaintiff. The credibility of witnesses does not play a role at this stage of the proceedings and the evidence is required to at least *prima facie* cover all the elements of the cause of action.

[6] I have perused the pleadings, the record and the judgment, and considered the arguments advanced before me. I do not think it appropriate to state my *prima facie* conclusions of whether absolution should or should not have been granted. It is sufficient to say that I am of the view that leave should be granted, and such leave to be granted to the Full Bench of this Division.

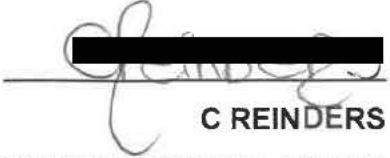
[8] Accordingly the following order is made:

1 Leave is granted to the Applicant to appeal to the Full Bench of the Free State High Court against the order of the Honorable Mgudlwa AJ on 18 June 2025 absolving the First Defendant from the instance.

2 The costs of this application will be costs in the appeal.

² *Gordon Lyod Page & Associates v Rivera and Another* 2001 (1) SA 88 (SCA); [2000] 4 All SA 241 (A).

³ *Ibid* para 2.


C REINDERS
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff (Applicant):

H J Benade

Instructed by:

G Du Toit Attorneys

c/o Symington de Kok Inc, Bloemfontein.

For the First Defendant (Respondent):

L M Maite

Instructed by:

M Neale Incorporated

c/o Kleingeld Attorneys, Bloemfontein.