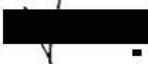




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-013876

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	<u>17/03/2026</u>
SIGNATURE	DATE

In the matter between:

JACOB CHARLES MNISI

FIRST APPLICANT

MENZI JOHN NYAMBI

SECOND APPLICANT

MAHLEKISANE MOSA CHIRWA

THIRD APPLICANT

FANYANA ENOCH BHEMBE

FOURTH APPLICANT

and

**THE MASTER OF THE HIGH COURT
OF SOUTH AFRICA, GAUTENG DIVISION,**

PRETORIA	FIRST RESPONDENT
SMILE ZANDILE NKOSI N. O.	SECOND RESPONDENT
HLUPHEKA SALMINA MOHALE N.O.	THIRD RESPONDENT
RODAH LINDIWE NGWEBYA N.O.	FOURTH RESPONDENT
JOSIAH NDABAMBI MOKOENA N.O.	FIFTH RESPONDENT
BONGAKE KENNETH SHAKOANE N.O.	SIXTH RESPONDENT
MAQUANDASHI ELIAS MATHABA N.O.	SEVENTH RESPONDENT
ISAAC SITHOLE N.O.	EIGHTH RESPONDENT
HENRY SIPHO LAMOLA N.O.	NINETH RESPONDENT
MOKWAZI THEMBEKA NDZINGASE NKAMBULE N.O.	TENTH RESPONDENT
MAGOLIDI JIM MANDLAZI N.O.	ELEVENTH RESPONDENT
ZULU SAMEUL CHIRWA N.O.	TWELVETH RESPONDENT
HENRY NTININI MZIMBA N.O.	THIRTEENTH RESPONDENT
AGNES NTOMBIKAISE MAVUSO N.O.	FOURTEENTH RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time of hand-down is deemed to be on 17 March 2026

LEAVE TO APPEAL JUDGMENT

Phahlamohlaka AJ

Introduction

[1] On 26 September 2025, I dismissed the applicants' application with costs. Aggrieved by my judgment and order, the applicants now launched an application for leave to appeal. The application is opposed by the second to the fourteenth respondents.

[2] I am not going to restate my judgment, save to indicate that this application was brought in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013 ("the Act"), which provides that:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

- (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."

[3] The applicants listed a number of grounds of appeal. I am not intending to deal with each and every ground of appeal because of the prolix nature thereof. However, it is the applicant's case that I ignored the amended notice of motion, and for that reason, I must grant the applicant leave to appeal. The applicant has not submitted that the facts of the case have changed as a result of the amended notice of motion. The applicant's prayers in the initial notice of motion, as well as in the amended notice of motion, are therefore very clear.

[4] For the applicants to succeed, the applicants must satisfy the court that the appeal has a reasonable prospect of success and that other compelling reasons exist as to why the appeal must be heard. It can therefore be cleaned from the grounds of appeal that the applicant relies on subsection (a)(i), which provides that leave to appeal may only be granted if the appeal has reasonable prospects of success.

Applicants' Submissions

[5] The applicants submit that the court misdirected itself in the interpretation of the relief sought. They contend that the court relied on the initial notice of motion instead of the amended notice of motion filed during January 2024, and consequently failed to properly consider the relief sought, including the appointment of an interim board of trustees pending a lawful election.

[6] The applicants further argue that the annual general meeting held on 13 July 2022 was not properly constituted in accordance with the provisions of the trust deed. They submit that the respondents were not eligible to be elected as trustees because they were not permanently resident on the trust property at the time of the election, as required by the trust deed.

[7] In addition, the applicants contend that the respondents failed to comply with a directive issued by the Master of the High Court on 7 January 2022 requiring that decisions regarding the removal or appointment of trustees be taken jointly by the existing trustees. According to the applicants, the failure to comply with that directive rendered the election invalid.

[8] The applicants further submit that the court failed to properly consider the provisions of section 20 of the Trust Property Control Act 57 of 1988, which empowers a court to remove trustees where it is in the interests of the trust to do so.

[9] On these grounds, the applicants argue that the appeal enjoys reasonable prospects of success and that leave to appeal should therefore be granted.

Respondents' Submissions

[10] The second to fourteenth respondents oppose the application and submit that the applicants have failed to satisfy the threshold set out in section 17(1) of the Act for the granting of leave to appeal.

[11] They contend that the applicants merely seek to re-argue issues that were fully ventilated and determined in the original judgment. According to the respondents, the court properly considered the relevant provisions of the trust deed, the evidence presented, and the applicable legal principles in concluding that the election of trustees at the meeting of 13 July 2022 was valid.

[12] The respondents further submit that the relief sought by the applicants has, in any event, become moot due to subsequent developments, including the holding of further elections and the confirmation by the relevant department of the legitimacy of the current trustees. As a result, the determination of the issues raised would have no practical effect.

[13] They also emphasise that the relief sought by the applicants involves the exercise of a judicial discretion, and that an appellate court will not readily interfere with such discretion unless it has been shown that it was not exercised judicially. According to the respondents, no such basis exists in the present matter.

[14] The respondents accordingly submit that the application for leave to appeal should be dismissed with costs.

Analysis

[15] The test for leave to appeal is well established. In terms of section 17(1)(a) of the Act, leave to appeal may only be granted where the court is of the opinion that the appeal would have a reasonable prospect of success or that there are compelling reasons why the appeal should be heard.

[16] Both counsel referred me to the Supreme Court of Appeal judgment of *S v Smith*¹ where Plasket JA gave guidance on the proper interpretation of what constitutes reasonable prospects of success when he said the following:

¹ *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

“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.”

[17] The dicta in *Smith* was emphasised in *MEC for Health, Eastern Cape v Mkhitha and Another*² where the court said the following:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal *would* have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[18] Having considered the submissions made on behalf of the parties and the judgment in respect of which leave to appeal is sought, I am not persuaded that the applicants have demonstrated that another court would reasonably arrive at a different conclusion.

² *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 paras 16 and 17.

[19] The issues raised by the applicants were fully considered in the main judgment. The application for leave to appeal largely repeats the arguments previously advanced and does not demonstrate any material misdirection or error warranting appellate interference.

[20] Furthermore, the relief sought is of a discretionary nature, and no basis has been established upon which an appellate court would interfere with the manner in which that discretion was exercised.

[21] In the circumstances, it is my considered view that the applicants have failed to meet the threshold required for the granting of leave to appeal.

Order

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

1 The application is dismissed with costs, including costs of Counsel to be taxed on scale B.

_____ 
KF PHAHLAMOHHLAKA
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Appearances

For the applicants: Adv. J H Klopper

Instructed by: Cavanagh and Richard Attorneys

For the 2nd to 14th Respondents: Adv. Van Vuuren

Instructed by: Neethling and Vosloo Incorporated

Date judgment reserved: 21 January 2026