



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

Not reportable

Case no: 7156/2024

In the leave to appeal application between:

ABRAHAM FRANCOIS NAUDE

FIRST APPLICANT

LINDA NAUDE

SECOND APPLICANT

and

MARTHINUS JOHANNES KAPP

FIRST RESPONDENT

BEN NAUDE

SECOND RESPONDENT

In re:

MARTHINUS JOHANNES KAPP

FIRST APPLICANT

BEN NAUDE

SECOND APPLICANT

and

THE MASTER OF THE HIGH COURT, BLOEMFONTEIN

FIRST RESPONDENT

THE CHIEF MASTER OF THE HIGH COURT OF

SOUTH AFRICA

SECOND RESPONDENT

ABRAHAM FRANCOIS NAUDE

THIRD RESPONDENT

LINDA NAUDE

FOURTH RESPONDENT

BURGER NAUDE

FIFTH RESPONDENT

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

SIXTH RESPONDENT

Neutral citation: *Naude and Another v Kapp and Another In re: Kapp and Another v
The Master of the High Court, Bloemfontein and Others (7156/2024)*

[2026] ZAFSHC 244 (15 April 2026)

Coram: GREYLING-COETZER J

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 15 April 2026.

Summary: Application for leave to appeal – no prospects of success on appeal – application dismissed.

ORDER

The application for leave to appeal is dismissed, with costs.

JUDGMENT

Greyling-Coetzer J

[1] The first and second respondents sought a declaratory order as contemplated in s 22(1) of the Administration of Estates Act 66 of 1965. The declaration of validity was granted by this Court; the Master of the High Court, Bloemfontein as first respondent in the *in re* application, was authorised to appoint the first respondent per the validity declaration, with costs to be paid by the deceased estate. The applicants seek leave to appeal above order to the Full Bench of this Division, alternatively the Supreme Court of Appeal.

[2] Section 17 of the Superior Courts Act 10 of 2013 sets out the test in an application for leave to appeal and provides that 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] In *Ramakatsa and Others v African National Congress and Another*¹ the test was articulated as follows:

‘... 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

¹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

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 opposed to "could" possibly means that the threshold for granting the appeal has been raised. If a reasonable 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.'

[4] The applicants rely on various grounds in support of the application for leave to appeal. They are summarised as follows: (i) this court erred in interfering with the duties of the Master of the High Court, Bloemfontein by finding that it had authority to appoint the executor for the deceased estate and interpreting the Master's report incorrectly; (ii) not finding that the Master already exercised its discretion not to appoint the first respondent; (iii) it erred in finding the nomination of the first respondent valid and finding that the first respondent should be appointed as a consequence; (iv) finding that the respondents did not apply of a final interdict; (v) not applying the *Plascon-Evans* principle² correctly; (vi) finding that the second respondent had an interest in the estate and had not waived such a right; and (viii) finding that it is undisputed that the second applicant is a beneficiary in terms of the deceased will. The applicants contend that this Court ought to have found that the second respondent's interest in the deceased estate was limited to the property 'Verlossingshoop' and that the second respondent's interest in the deceased estate ceased when he waived his right to the property, alternatively when it was sold in 2023.

[5] I am not persuaded that the appeal enjoys reasonable prospects of success, nor that another court would be inclined to arrive at a different conclusion. In the premises,

² As articulated in *Plascon-Evans Painted Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

there exists no sound or rational basis upon which leave to appeal ought to be granted. I accordingly refer to the reasoned judgment wherein declaratory relief was afforded to the respondents. In that context, and having regard to the grounds of appeal, I emphasise, without express limitation, the following:

(a) The judgment is explicit as to the nature of the enquiry and the issues requiring determination under s 22(1) of the Administration of Estates Act 66 of 1965. The relief was confined to a declaration of the validity of the nomination as contemplated in that section, coupled with an authorisation to the Master of the High Court, Bloemfontein, to appoint the first respondent with reference to such declaration, without derogating from any of the Master's broader statutory powers in relation to the appointment of an executor in the deceased estate.

(b) The Master's report comprehensively sets out the relevant background, indicating that, although there had initially been an intention to appoint the first respondent, subsequent objections led to a decision not to proceed with such appointment. As the Master is entitled to in terms of s 22 of the Administration of Estates Act. The Master further explains that, in such circumstances, a discretionary appointment would ordinarily follow and confirmed that an appointment would be made pursuant to the Court's determination of the pending application.

(c) The findings concerning the validity of the nomination and the second respondent's interest in the deceased estate have been fully canvassed in the judgment and require no repetition. The grounds of appeal in this regard merely replicate the arguments advanced in the application.

(d) No challenge was mounted against the express terms of the deceased's will, which accordingly served undisputed before this Court.

(6) Having found as above I proceed to consider whether there are any compelling reasons to grant leave to appeal. Vital to this enquiry is the merits and accordingly find that there are no compelling reason justifying an appeal to be entertained.

(7) Consequently, the following order is made:

The application for leave to appeal is dismissed, with costs.



D GREYLING COETZER
JUDGE OF THE HIGH COURT

Appearances

For the Applicants: P DU P Greyling

Instructed by: FS Law Inc

For the Respondents: J S Rautenbach

Instructed by: Kapp Attorneys C/O Kramer Weihmann
