



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) NOT REPORTABLE
(2) NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2025-092254

DATE: 22 May 2026

In the matter between:

AFRICAN RAINBOW CAPITAL (PTY) LIMITED

Applicant

and

PULA GROUP LLC

First Respondent

PULA GRAPHITE PARTNERS TANZANIA LIMITED

Second Respondent

AFRICAN RAINBOW MINERALS LIMITED

Third Respondent

DR PATRICE TLHOPANE MOTSEPE

Fourth Respondent

ARCH SUSTAINABLE RESOURCES GPCO LIMITED

Fifth Respondent

BOWLINE PROFESSIONAL SERVICES (PTY) LTD

Sixth Respondent

Neutral Citation: *African Rainbow Capital v Pula Group and Others (2025-092254) [2026] ZAGPJHC --- (22 May 2026)*

Coram: Adams J

Heard: 21 May 2026 – ‘virtually’ as a videoconference on *Microsoft Teams*.

Delivered: 22 May 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:00 on 22 May 2026.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold – Another compelling reason for leave to appeal to be granted (s 17(1)(a)(ii)) – the decision sought to be appealed against involves an important question of law – Leave to appeal granted to the Full Court of the Gauteng Division of the High Court.

ORDER

- (1) The first and second respondents are granted leave to appeal to the Full Court of this Division.
 - (2) The cost of this application for leave to appeal shall be costs in the appeal.
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JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original opposed application by the applicant for declaratory relief in relation to proceedings presently pending between the parties in the High Court of the United Republic of Tanzania. On 14 April 2026 I handed down a written judgment and an order in terms of which most of the relief sought by the applicant in its application was granted with costs. Importantly, I issued a declaratory order to the effect that, applying South African law, the applicant has no obligations arising from the confidentiality agreement concluded between the first respondent and the third respondent.

[2]. The first and second respondents ('Pula respondents') apply for leave to appeal against the whole of the aforementioned judgment and order, including the order for costs. These respondents contend that I erred in granting the aforesaid order and that I should instead have dismissed the applicant's application with costs.

[3]. In a nutshell the respondents' case in this application for leave to appeal is that I erred in that I misapplied the applicable common-law requirements for jurisdiction over *peregrini*. I erred, so the contention goes, in finding that an agreement on the governing law of a contract can and should, in the circumstances of the matter, amount to a submission to the jurisdiction of that

country's courts. In that regard, the contention on behalf of the respondents is that I erred in not applying the common law as set out in *Bid Industrial Holdings (Pty) Ltd v Strang and Another (Minister of Justice and Constitutional Development, Third Party)*¹, a judgement of a superior court by which I was bound.

[4]. Mr Morrison SC, who appeared on behalf of the first and the second respondents, submitted that I should not have found that this Court has jurisdiction only because of the connecting factors referenced in my judgment *a quo*, notably the fact that the confidentiality agreement was concluded in Johannesburg and that it provided that its terms, application and consequences are to be determined in accordance with the South African law. These 'connecting factors', so the contention goes, ought not to have been adopted as each is flawed in logic and in law.

[5]. Nothing new has been raised by the first and the second respondents in their application for leave to appeal. In my original judgment of 14 April 2025, I have dealt with most, if not all of the issues raised by the respondents in their application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate the conclusion I reached in my said judgment, which is that, as things stand at present, this Court could and should accept jurisdiction over and take cognisance of the applicant's suit if there is a sufficiently close connection between the suit and the geographical area of jurisdiction of this Court.

[6]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that leave to

¹ *Bid Industrial Holdings (Pty) Ltd v Strang and Another (Minister of Justice and Constitutional Development, Third Party)* 2008 (3) SA 355 (SCA).

appeal may only be given where the judge concerned are of the opinion that ‘the appeal *would* have a reasonable prospect of success’.

[7]. In *Ramakatsa and Others v African National Congress and Another*², the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a court of appeal ‘would’ reasonably arrive at a conclusion different to that of the trial court. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[8]. The ratio in *Ramakatsa* simply followed *S v Smith* 2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the 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.’

[9]. In *Mont Chevaux Trust v Tina Goosen*³, the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*⁴. In that matter the SCA

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

³ *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

⁴ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁵.

[10]. I am persuaded that the issues raised by the first and the second respondents in their application for leave to appeal, are issues in respect of which another court is likely to reach conclusions different to those reached by me. I therefore conclude that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does have a reasonable prospect of success.

[11]. Moreover, I am of the view that there is another compelling reason why the appeal should be heard, as envisaged by s 17(1)(a)(ii) of the Superior Courts Act, and that relates to the fact that the issues implicated in this matter are novel insofar as they relate to recently developed common law principles relating to the requirements for jurisdiction over *peregrini*.

[12]. Leave to appeal should therefore be granted. And in that regard, I do not believe that the complexity of the legal issues raised in this matter is such that I should grant leave to appeal to the Supreme Court of Appeal.

Order

[13]. In the circumstances, the following order is made:

⁵ *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

- (1) The first and the second respondents are granted leave to appeal to the Full Court of this Division.
- (2) The cost of this application for leave to appeal shall be costs in the appeal.

A handwritten signature in black ink, appearing to read 'L R ADAMS', is written over a solid black rectangular redaction box.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	21 May 2026 – ‘virtually’ as a videoconference on <i>Microsoft Teams</i>
JUDGMENT DATE:	22 May 2026 – Judgment handed down electronically
FOR THE APPLICANT:	S Scott
INSTRUCTED BY:	Webber Wentzel, Sandton
FOR THE FIRST and SECOND RESPONDENTS:	L J Morrison SC
INSTRUCTED BY:	Nicqui Galaktiou Incorporated, Illovo, Johannesburg
FOR THE SECOND to SIXTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance