

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2026-078598

Delete whichever is not applicable
REPORTABLE: ~~YES~~ / NO
OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
REVISED: ~~YES~~/NO

19 June 2026

DATE



SIGNATURE

In the matter between:

JOHANNES MARISHANE

1st Applicant

JOEL TSHEGEDI MARISHANE

2nd Applicant

And

ELMOND KATISO THELEJANE

Respondent

JUDGMENT

APPLICATION FOR LEAVE TO APPEAL

Mazibuko J

- [1] The applicants seek leave to appeal to the Full Court of the High Court of South Africa, Gauteng Division, Pretoria, alternatively to the Supreme Court of Appeal

(the SCA), against the whole judgment and the order of this court delivered on 30 April 2026. This court ordered the matter enrolled as urgent, declared the applicants' notice of appeal against an eviction order obtained by default judgment to be irregular, incompetent and of no force and effect in law, and held that such notice does not suspend the operation and execution of the eviction order granted on 5 February 2026 under case number 027041/2025. The eviction order remained in full force and effect, save that the date of 1 April 2026 was substituted by 11 May 2026, and authorised and directed the Sheriff of the High Court, assisted by the SAPS, to execute the warrant of ejection pursuant to the eviction order in the event the respondents fail or refuse to vacate the property on or before 10 May 2026.

- [2] The application for leave to appeal is opposed, and no cross-appeal has been filed.
- [3] I believe it is prudent to note that following the filing of the leave to appeal application on 13 May 2026, the application was set down for hearing on 20 May 2026. On 18 May, the applicants stated that they were not ready to proceed. On 19 May, a directive was issued that the application would be determined on paper, and that, in the event the parties intended to file heads of argument or written submissions, they could do so on or before 22 May. I now turn to the application.
- [4] Given that the relevant issues and reasons for the order were addressed in the judgment, this court sees no need to set out the full grounds for leave to appeal. The applicants appear to base their application for leave to appeal on the same grounds as were debated at the hearing.
- [5] The grounds for leave to appeal are set out in the applicants' application for leave to appeal. In opposition, the respondent, in his written submissions, has set out why the application ought not to succeed. The grounds of appeal are submissions and contentions that this court misdirected itself on the legal framework and failed to consider relevant case law. The court was referred to case law, including *BE v NT and others (505/2025) [2026] ZASCA 25 (11 March 2026)* (the "BE case") and *Lee v RAF and A.P and Another v Cohen and Others*

(Appeal) (A 216/2024; 21188/2023) [2025] ZAWCHC 66 (24 February 2025) (“Cohen”).

- [6] In *MEC for Health, Eastern Cape v Mkhitha and Another*,¹ the Supreme Court of Appeal, held that: *"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."*
- [7] Applying the test in *Mkhitha* and assessing the merits of the applicants' case, including their grounds of appeal, the court found no grounds or compelling factors that necessitated the hearing of the applicants' appeal.
- [8] In my respectful view, the court correctly applied the law to the facts and, in accordance with its finding as set out in the judgment, granted an order. Consequently, the application for leave to appeal cannot succeed.
- [9] For these reasons, the following order is hereby granted.

Order:

[9.1] The application for leave to appeal is dismissed.



NGM MAZIBUKO

JUDGE OF THE HIGH COURT

This judgment was handed down electronically and circulated to the parties' representatives by email.

¹ (1221/2015) (2016) ZASCA 176 (25 November 2016).

Papers filed on: 4 May, 6 May and 18 May 2026 as
per CaseLines

(The matter was considered on
paper)

Judgement delivered on: 19 June 2026

Counsel for the applicant: Mr. J Marishane

Instructed by: Marishane Attorneys

Counsel for the respondent: In person

Instructed by: