



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

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

CASE NO: 2024-120971

DATE: 14 SEPTEMBER 2026

In the matter between:

GAME BREEDING AFRICA (PTY) LIMITED

First Plaintiff

DANIEL CHRISTOFFEL LAURENS PONT

Second Plaintiff

JOHANNES JACOBUS PICKARD

Third Plaintiff

and

OBARO FINANCIAL SERVICES (PTY) LIMITED

First Defendant

LAND & AGRICULTURAL DEVELOPMENT

BANK OF SOUTH AFRICA

Second Defendant

Neutral Citation: *Game Breeding Africa and Others v Obaro Financial Services and Another* (2024-109949) [2026] ZAGPJHC --- (14 September 2026)

Coram: Adams J

Heard on: 10 September 2026 – ‘virtually’ as a videoconference on *Microsoft Teams*

Delivered on: 14 September 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 10:30 on 14 September 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 – Appealability – order of court *a quo*, being interlocutory in nature and not final in effect, is not appealable – as was held by the SCA in *Hassim v Commissioner, South African Revenue Service* – a decision in regard to discovery is not appealable – therefore, application for leave to appeal should be refused – *Held further* that the issues raised by the plaintiffs in their application for leave to appeal, are issues in respect of which another court is unlikely to reach conclusions different to those reached by the court *a quo* – another court is unlikely to make factual findings or come to legal conclusions at variance with factual findings made and legal conclusions reached by the court *a quo* – the appeal, therefore, has no reasonable prospects of success – Leave to appeal refused with costs.

ORDER

- (1) The plaintiffs' application for leave to appeal is dismissed with costs.
 - (2) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolve, shall pay the second defendant's costs of the opposed application for leave to appeal on the attorney and client scale, including Counsel's charges on scale 'C' of the tariff as contemplated in Uniform Rule of Court 67A(3), read with rule 69.
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JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I am again referring to the parties as referred to in the main defended action, in which the first, second and third plaintiffs (plaintiffs) seek declaratory relief against the first and the second defendants. The plaintiffs are the applicants in this application for leave to appeal and the second defendant is the respondent herein.

[2]. On 28 August 2026 I handed down a written judgment and an order in plaintiffs' interlocutory application in terms of Uniform Rule of Court 35(7) for an order compelling the second defendant to reply to their (plaintiffs') rule 35(3) notice dated 24 June 2026. The said application was dismissed by me with costs.

[3]. The plaintiffs apply for leave to appeal against the whole of the aforementioned judgment and order, including the order for costs. The application for leave to appeal is based on the provisions of sub-section (i) of section 17(1)(a) of the Superior Courts Act 10 of 2013, which reads as follows: -

'17 **Leave to appeal**

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

[4]. The plaintiffs contend that I erred in dismissing the application and that I should instead have granted same. To determine the dispute as to whether there was a valid cession in existence, so the plaintiffs submit, requires an enquiry into whether the agreements relied upon for the second defendant's *locus standi*, are indeed in fact valid and extant, under circumstances where the agreements were subject to conditions precedent. Secondly, if these conditions precedent have been met, whether it contained a valid cession of rights.

[5]. I therefore erred in finding, so the contention on behalf of the plaintiffs continues, that the documents required are not relevant to the dispute between the parties. That is so, because to enable them to prove the second defendant's lack of *locus stand*, the plaintiffs require the said documents. Furthermore, I was wrong, so the plaintiffs submit, in concluding that they are not entitled to these documents because it is not relevant to the separated issues, and also because the plaintiffs are not entitled to challenge the validity of the agreements, to which they were not party.

[6]. It is also the plaintiffs' contention that the court *a quo*, in making a final finding as to the plaintiffs' right to challenge the validity of the underlying cession agreement, the separated issues became *res judicata*. It therefore cannot be revisited by the Court, which means that the judgment and order must be set aside, since the Court was not called upon, and therefore lacked the necessary jurisdiction to make a final finding on the separated issues.

[7]. This argument by the plaintiffs is misconceived for the simple reason that no such order was made by the court *a quo*. The order granted was based on the court's view that the plaintiffs are not entitled to challenge the validity of the

cession and on that basis refused the application for further and better discovery for documents in support of that contention. No final order was made in that regard and it remains open for the plaintiffs to persuade the court otherwise.

[8]. This ground on which the leave to appeal is based is similar to one of the bases of appeal in *Hassim v Commissioner, South African Revenue Service*¹. The Supreme Court of Appeal in that matter rejected the contention and held as follows: -

'[16] ... The validity of the grounds of objection was not an issue to be decided by the Court *a quo* and no order was made in this regard. The statement simply formed part of the reasoning of the Court *a quo* in respect of a non-appealable order and does not preclude the Court *a quo* from changing its view in this regard. It does not constitute a "decision" let alone a final "decision" by the Court *a quo* in respect of the validity of the grounds of objection. The statement is, therefore, not appealable. See *Administrator, Cape, and Another v Ntshwaqela and Others* 1990 (1) SA 705 (A) at 715D where Nicholas AJA said:

"There can be an appeal only against the substantive order made by a Court, not against the reasons for judgment".'

[9]. I therefore reject the ground for leave to appeal that the court *a quo* has made a final decision in relation to the issue which it is required to determine at the trial.

[10]. The main difficulty with the plaintiffs' application for leave to appeal is the fact that my order of 28 August 2026, being interlocutory in nature and not final in effect, is not appealable. As was held by the SCA in *Hassim v Commissioner, South African Revenue Service*, a decision by the Court *a quo* in regard to discovery is not appealable.

[11]. On this basis alone, the application for leave to appeal should fail.

¹ *Hassim v Commissioner, South African Revenue Service* 2003 (2) SA 246 (SCA).

[12]. Even if I am wrong about the appealability of my order of 28 August 2026, the application for leave to appeal should nevertheless fail. I say so for the reasons which follow.

[13]. Nothing new has been raised by the plaintiffs in its application for leave to appeal. In my original judgment of 28 August 2026, I have dealt with most, if not all of the issues raised by the plaintiffs in their application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to say what I said in the judgment by way of a conclusionary remark, that being that the plaintiffs seek documents which do not relate to and which cannot substantiate a pleaded defence.

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

[15]. 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.

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

[16]. 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.’

[17]. 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 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.

[18]. I am not persuaded that the issues raised by the plaintiffs 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

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).

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).

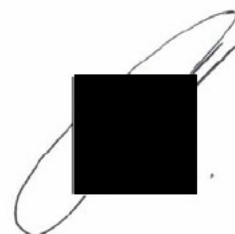
that another court is unlikely to make factual findings or come to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does not have a reasonable prospect of success.

[19]. Leave to appeal should therefore be refused.

Order

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

- (1) The plaintiffs' application for leave to appeal is dismissed with costs.
- (2) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolve, shall pay the second defendant's costs of the opposed application for leave to appeal on the attorney and client scale, including Counsel's charges on scale 'C' of the tariff as contemplated in Uniform Rule of Court 67A(3), read with rule 69.

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

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

HEARD ON:	10 September 2026 – ‘Virtually’
JUDGMENT DATE:	14 September 2026 – handed down electronically.
FOR THE PLAINTIFFS / APPLICANTS:	F G Janse Van Rensburg
INSTRUCTED BY:	Eugene Geyser Attorneys, Viljoenskroon
FOR THE SECOND DEFENDANT / RESPONDENT:	M P Van der Merwe SC, together with (Ms) A Van der Merwe
INSTRUCTED BY:	Leahy Attorneys Incorporated, Sandton