

SOUTH AFRICA / JUDGMENT

Medupe and Others v African National Congress and Others (UM160/2022) [2023] ZANWHC 159 (7 September 2023) [2023] ZANWHC 159

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

UM160/2022

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION – MAHIKENG

CASE NO: UM160/2022

Reportable: YES

/ NO

Circulate to Judges: YES

/ NO

Circulate to Magistrates:

YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

LEBOGANG MEDUPE First Applicant

LESEGO SERAPELWANE

Second Applicant

PUSO MOENG

Third Applicant

SELLO MOLEFE

Fourth Applicant

ITUMELENG MOSWANE

Fifth Applicant

And

AFRICAN NATIONAL CONGRESS

First Respondent

NONO MALOYI

Second Respondent

LAZZY MOKGOSI

Third Respondent

LOUIS DIREMELO

Fourth Respondent

VIOLA MOTSUMI

Fifth Respondent

SELLO LEHARI

Sixth Respondent

ORDER

In the result the following order is made:

1. The application for leave to appeal is dismissed.
2. The applicants are ordered to pay the costs including costs of two counsel jointly and severally the one paying the others to be absolved.

LEAVE TO APPEAL JUDGMENT

DJAJE AJP

- [1] This is an application for leave to appeal against the whole judgment handed down on 23 May 2023 where the applicants' application was dismissed with costs including costs of two counsel.
- [2] The test to be applied in an application for leave to appeal is set out in section 17 (1) (a) of the Superior Courts Act 10 of 2013 which provides that:

“(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;”

- [3] According to the applicants the test applicable in this matter is that the appeal would have reasonable prospect of success and not that there are some other compelling reasons why the appeal should be heard.
- [4] The issue of prospects of success has been dealt with in our courts over a period of time. The Supreme Court of Appeal in *Rex v Baloyi* 1949 (1) SA 523 (A) held that: “leave to appeal should not be granted unless the applicant has a reasonable prospect of success on appeal, and that this reasonable prospect of success is not merely a fairly arguable case, or even an arguable case”.
- [5] In the matter of *The Mont Chevaux Trust (IT2012dcc/28) v Tina Goosen & 18 Others* (LCC14R/2014) [2014] ZALCC 20 it was held that:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against”.

- [6] The SCA in *MEC for Health, Eastern Cape v Mkhitha* (1221/15) [2016] ZASCA 176 (25 November 2016) stated that:

“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.

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 if 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] This application is opposed by all the respondents as appearing from the main judgment. It is not clear why the applicants in the leave to appeal cited thirty other respondents. Nothing was said about them and why they were cited. Reference to respondents in this judgment is to the first to sixth respondents.
- [8] The grounds of appeal have been summarised as follows:

“7. In summary, the application for leave to appeal is premised on the following grounds of appeal, namely. The disputed facts are the following:

7.1 the learned Judge erred in finding that on 4 July 2022 the ANC NEC took a decision to extend the Interim Provincial Committee’s (“IPC”) term of office to the end of August 2022;

7.2 the learned Judge erred in finding that the ANC NEC in resolving to extend the term of office of the IPC, the NEC acted in terms of the ANC Constitution and was therefore authorised to extend the IPC’s term of office;

7.3 the learned Judge erred in not agreeing with the judgment of Snyman J under case number: UM152//2022 which found that the ANC Constitution does not make reference to the NEC being authorised to extend the term of office of the IPC during dissolution of the North West Provincial Executive Council (“PEC”);

7.4 the learned Judge’s reliance on the Pilane decision was misplaced and cannot find application because the facts in Pilane are distinguishable to the matter.”

[9] In the main the applicants argued that the ANC NEC was not authorised to extend the term of the IPC beyond nine (9) months and as such the term of office of the IPC had expired and they could not have taken any valid decision after the period of nine months. Further that this court’s judgment was in conflict with the one of Snyman J which was accepted by the NEC. It was also submitted that reference to the Pilane case was misplaced as that matter is distinguishable. The applicants argued that the Pilane matter dealt with the issue of locus standi which is not an issue herein.

[10] As indicted above this application was opposed by the respondents and I will deal with their submissions together. The respondents contended that the applicants failed to prove that there was never an extension of the term of the IPC by the NEC and as such that argument cannot be sustained. On the issue of the take-over by the NEC, the respondents submitted that the NEC is clothed with the wide powers by the ANC Constitution in terms of Rule 12.2.20.

[11] The respondents correctly referred to the judgment at paragraph [22] where the issue of the powers of the NEC was laid out and discussed. This is what stands in the constitution of the ANC and should be known by the applicants. There are no prospects that another court would come to a different conclusion. The judgment of Snyman J dealt with the voting powers of the IPC and it after such decision that the NEC issue a statement that the conference will proceed under its directive as the highest decision making organ of the ANC. I have already indicated that the NEC derives its powers from the constitution. As far as the case of Pilane is concerned, reference thereto was in relation to avoiding a lacuna where a term of office expires and not on the issue of locus standi as argued by the applicants. That decision of Pilane still stands and have not been set aside.

[12] After careful consideration of the submissions on behalf of the applicants and the respondents, I am of the view that there are no reasonable prospects that another Court would come to a different conclusion. Consequently, the application must fail and the applicants to pay costs including costs of two counsel.

[13] Consequently, the following order is made:

J T DJAJE

ACTING JUDGE PRESIDENT

NORTH WEST HIGH COURT, MAHIKENG

APPEARANCES

DATE OF HEARING: 25 AUGUST 2023 DATE OF JUDGMENT: 07 SEPTEMBER 2023 COUNSEL FOR THE APPLICANT: ADV SNYMAN SC with ADV MPYA COUNSEL FOR 1ST RESPONDENT: ADV MORISSON SC with ADV SALUKHAZABNA COUNSEL FOR OTHER RESPONDENTS: ADV MOKHARE SC with ADV NTINGANA

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Prepared on 12 October 2026 · Esheria