

SOUTH AFRICA / JUDGMENT

**Poulos NO and Others v Van Den
Heever NO and Another (43528/2015)
[2023] ZAGPJHC 977 (11 August 2023)
[2023] ZAGPJHC 977**

COURT

South Gauteng High Court, Johannesburg

BEFORE

Oosthuizen-Senekal CSP

CASE / FILE NUMBER

43528/2015

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG

CASE NUMBER: 43528/2015
NOT REPORTABLE
NOT OF INTEREST TO
OTHER JUDGES
NOT REVISED
11.08.23

In the matter between: MARIA
POULOS N.O
FIRST
APPLICANT
MARIA
PAULOS
SECOND
APPLICANT
PERICLES
VALASIS
THIRD
APPLICANT
JOANNE
VALASIS
FOURTH
APPLICANT
PETER
VALASIS

FIFTH
APPLICANT
THE
MASTER OF THE SOUTH GAUTENG HIGH COURT
SIXTH
APPLICANT
And
THEODOR
WILHELM VAN DEN HEEVER N.O
FIRST
RESPONDENT
JOSHUA
MUTHANYI N.O
SECOND
RESPONDENT
LEAVE TO APPEAL -

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ:

- [1] I shall refer to the parties as referred to in the main action. The defendants are the applicants in this application for leave to appeal and the respondents herein were the plaintiffs in the action. The defendants apply for leave to appeal against the whole of my judgment and the order, as well as the reasons therefor, which I granted on 18 April 2023, in terms of which I granted the order sought by the plaintiffs in the following terms;
1. The renunciation of any benefit by the insolvent, Nicholas Valasis, in the deceased estate of the late Lulu Valasis is declared invalid and of no force or effect;
 2. The insolvent, Nicholas Valasis, adiated his right to the benefit bestowed unto him in terms of the Will;
 3. With retrospective effect, the right to the inheritance became an asset in the estate of Nicholas Valasis;
 4. The right to the inheritance is an asset that vests in the trustees of the insolvent estate of Nicholas Valasis;
 5. The First Defendant is to draw a Liquidation and Distribution Account in the deceased estate of Lulu Valasis in accordance with the provisions of the Will;
 6. The Liquidation and Distribution Account as per prayer 5 be drawn and lodged with the Sixth Defendant within 6 (six) months after this order;
 7. The dividends in terms of the Liquidation and Distribution Account as set out in prayer 5 above be paid out within 2 (two) months subsequent to the confirmation of the Liquidation and Distribution Account by the Sixth Defendant;

8. Costs of suit including cost of one counsel to be paid by the Third, Fourth and Fifth Defendants, jointly and severally, the one paying the other to be absolved.
- [2] The application for leave to appeal is mainly against my interpretation and legal conclusion, relating to my interpretation of various correspondence between Mr Nicolas Valasis, Mr Kokkoris, attorney acting on behalf of the latter, Mr Cook, an arbitrator, and Mr Hirschowitz, an attorney acting on behalf Ms Maria Paulos, appointed executor of the deceased estate of the late Mrs Lulu Valasis.
- [3] In sum, I had concluded in my judgment that Mr Nicolas Valasis adiated the benefit due to him in the deceased estate of the late Lulu Valasis, his mother and as a result that the right to the inheritance is an asset that vests in the trustees of his insolvent estate.
- [4] The defendants have raised several grounds for leave to appeal. The grounds for leave to appeal appear on the record; therefore, I do not deem it necessary to repeat the same in this judgment.
- [5] The defendants contended that the appeal has reasonable prospects of success in that another court would come to a different conclusion.

Furthermore, it was argued that the interests of justice play an important role in this application due to the issues raised during

the trial which related to adiation and renunciation of benefits in a will.

- [6] Nothing new has been raised by the defendants in this application for leave to appeal. In my original judgment, I have dealt with most of the issues raised and it is not necessary to repeat those in full. Suffice to restate what I said in my judgment, namely that applying the applicable legal principles relating to adiation and renunciation of benefits in a will and on a proper interpretation of the correspondence between the role players in the present matter, Mr Nicolas Valasis adiated the benefit due to him in the estate of his late mother, which he did during December 2013.
- [7] It is trite that leave to appeal should only be granted if:
- i. The appeal would have 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.[1]
- [8] Therefore, leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success, or when there are compelling reasons that the appeal should be heard, including conflicting judgments on the matter under consideration. [my emphasis]

- [9] It is also well established that the test as envisaged in this section is more stringent or requires a higher standard than the previous test.[2] To succeed in an application for leave to appeal, the applicant must demonstrate that his or her appeal “would” have a reasonable prospect of success or that there are other compelling reason/s which would include other issues of public interest.
- [10] Counsel provided me with extensive heads of argument, which I have considered. As stated in *S v Smith*,[3] what the test of reasonable prospects of success postulates, is 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.
- [11] If the Court is not persuaded of the prospects of success, it must still enquire whether there is a compelling reason for the appeal to be heard.[4] Compelling reasons include the fact that the decision sought to be appealed against involves an important question of law and that the administration of justice, either generally or in the particular case concerned, requires the appeal to be heard. Furthermore, a discreet issue of public importance which will have an effect on future matters, even where an appeal has become moot, constitutes a compelling reason.
- [12] It is important that this matter, amongst others, concern the legal principles relating to the election of a beneficiary in a will to adiate or renunciate such benefit.
- [13] I am persuaded that the issues raised by the defendants in this application for leave to appeal are issues in respect of which another court is likely to reach different conclusions to those reached by me. I am therefore of the view that there are reasonable prospects of another court coming to legal conclusions different from those reached by me. Furthermore, that it would be of importance that the Full Court of this Division provides guidance relating to the legal principles concerning adiation and renunciation of an inheritance particularly the procedures to be followed. The appeal therefore, in my view, has a reasonable prospect of success.
- [14] Leave to appeal should be granted.
- [15] Having said that, this matter is not of a such complex nature that it should be referred to the Supreme Court of Appeal and I therefore intend granting leave to appeal to the Full Court of this Division.

Order

- [16] In the circumstances, the following order is made:
1. The defendants application for leave to appeal succeeds.
 2. The defendants are granted leave to appeal to the Full Court of this Division.

3. The costs of this application for leave to appeal shall be costs in the appeal.

CSP OOSTHUIZEN-SENEKAL

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to Case Lines and by release to SAFLII. The date and time for hand-down is deemed to be 16h00 on 11 August 2023.

DATE OF HEARING: 7 July 2023

DATE JUDGMENT DELIVERED: 11 August 2023

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[1] Section 17 (1) of the Superior Courts Act 10 of 2013. “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;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties. ...

(6) (a) If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-

(i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or (ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.”

[1] Section 17 (1) of the Superior Courts Act 10 of 2013.

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(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

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would lead to a just and prompt resolution of the real issues between the parties.

...

- (6) (a) If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a Division as a court of

first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be

heard by a full court of that Division, unless they consider-

- (i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.”

[2] See *The Mont Chevaux Trust (IT2012/38) v Tina Goosen* (unreported LCC Case No. LCC14R/2014 dated 3 November 2014), *Acting National Director of Public Prosecution v Democratic Alliance* (unreported GP Case No. 19577/09 dated 24 June 2016) at paragraph [25], *Notshokovu v S* (unreported SCA Case No. 157/15 dated 7 September 2016); *Democratic Alliance v The President of the Republic of South Africa* (unreported GP Case No. 21424/2020) dated 29 July 2020 at paragraph [4], *Magashule v Ramaphosa* 2021(3) All SA 857 (GJ) (a decision of the Full Court) at paragraph [5] and *Ramakatsa and Others v African National Congress* (unreported SCA Case No. 724/2019) dated 31 March 2021 at paragraph [10].

[3] *S v Smith* 2012 (1) SACR 567 (SCA).

[4] Section 17 (1)(a)(ii).

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Prepared on 10 October 2026 · Esheria