

SOUTH AFRICA / JUDGMENT

Skhosana and Another v Makhalini Womlambo Communal Property Association (Leave to Appeal) (1877/22) [2025] ZAMPMHC 25 (15 April 2025) [2025] ZAMPMHC 25

COURT

Middelburg High Court, Mpumalanga

BEFORE

K F Phahlamohlaka

CASE / FILE NUMBER

1877/22

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IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG LOCAL SEAT

Case No:1877/22

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED

SIGNATURE

Date: 15 April 2025

In the matter between:

Botwana Witbooi Skhosana First

Applicant

Mandla John Skhosana

Second Applicant

And

Makhalini Womlambo Communal Respondent

Property Association

In re:

Makhalini Womlambo Communal

Applicant

Botwana Witbooi Skhosana

First Respondent

Amos Skhosana

Second Respondent

Mandla John Skhosana

Third Respondent

Esther Skhosana

Fourth Respondent

Elvis Mathibela

Fifth Respondent

The Minister of Agriculture

Sixth Respondent

Land Reform and Rural Development

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 15 April 2025 at 10:00.

JUDGMENT (LEAVE TO APPEAL)

Phahlamohlaka AJ

[1] This is an application for leave to appeal the judgment and order handed down by this Court on 24 June 2024 dismissing the applicant's

application with costs. The application is opposed.

[2] This application was filed out of time, but the applicants filed a condonation application that was not opposed.

[2] Applications for leave to appeal are governed by section 17(1) of the Superior Courts Act 10 of 2013, which provides as follows:

“(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] The issue for determination is therefore, whether there exist reasonable prospects of success or that there are some compelling reasons why the appeal should be heard.
- [4] In *The Mont Chevaux Trust (IT2012/38) v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) para 6 where Bertelsmann J said the following:

“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. 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.”

- [5] It is trite that previously in applications of this kind the test to be applied was whether there were reasonable prospects that another court may come to a different conclusion. The principles laid down by Plasket AJA in *S v Smith* 2012(1) SACR 567(SCA) at para [7] therefore in considering what constitute reasonable prospects of success, remains undisturbed when the court held as follows:

“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. 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.” see also *MEC Health, Eastern Cape Mkhitha and Another*

[2016] ZASCA 176 at para [16] and [17].

- [6] The above principles emphasise that the requirement for a successful leave to appeal is more than a mere possibility that another judge might come to a different conclusion. The test is whether there is a reasonable prospect of success that another judge would come to a different

conclusion.

- [7] In *Smith v S*[1] the Supreme Court of Appeal said the following:

“[7] 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. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has real prospects of success on appeal and that those prospects are not removed 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 categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

- [8] The Supreme Court of Appeal, again, in *MEC for Health, Eastern Cape v Mkhitha and Another*[2] emphasized the following:

“[16] 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 must 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.

- [17] 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.”
- [9] In this case I dealt with the points of law and therefore my judgment is not dispositive of the matter. However, the applicants argued that this matter relates to the proper interpretation of the respondent’s constitution and the provisions of the Communal Properties Associations Act, 28 of 1996.
- [10] I am therefore, persuaded that there is some compelling reason why the appeal should be heard and those issues raised by the applicants need clarity from the Supreme Court of Appeal. Consequently, the application must succeed.

- [10] In the result, I make the following order:

- (a) Condonation is granted for the late noting of the application for leave to appeal.
- (b) Leave to appeal is granted to the Supreme Court of Appeal.
- (c) Costs shall be costs in the Appeal.

K F PHAHLAMOHHLAKA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION

APPEARANCES

For the Applicant: Adv H E Mpe Instructed By: JM Masombuka Attorneys Email: info@jmmasombukanpartners.co.za For The Respondents: Adv T D Sibiya Instructed by: Pual Du Plessis Attorneys. Email: justine@pduplessislaw.co.za Date of hearing: 11 April 2025 Date of Judgment : 15 April 2025

[1] [2011] ZASCA 15; 2012(1) SACR 567(SCA) para 7.

[2] [2016] ZASCA 176 para 16 and 17.

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Prepared on 10 October 2026 · Esheria