



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
<i>21 June 2023</i> <i>[Signature]</i> 	

CASE NO: LCC26/2010

In the matter between:

**SOUTH AFRICAN RIDING FOR THE DISABLED
ASSOCIATION**

Claimant

and

**THE REGIONAL LAND CLAIMS COMMISSIONER:
WESTERN CAPE**

First Defendant

SEDICK SADIEN

Second Defendant

**THE MINISTER FOR RURAL DEVELOPMENT AND
LAND REFORM**

Third Defendant

THE MINISTER FOR PUBLIC WORKS

Fourth Defendant

JUDGMENT

Application for leave to appeal

COWEN J

1. On 4 May 2022 I delivered judgment on an application in terms of Rule 7(2)(b) of the Rules of this Court for leave to dispute the authority of Igghsaan Sadien Attorneys to represent the Second Defendant by calling on them to file a power of attorney duly executed by the Second Defendant. The application was instituted by the South African Riding for the Disabled Association (SARDA). I dismissed the application for the reasons set out in my judgment.
2. SARDA applies for leave to appeal. I heard argument on the leave application on 15 June 2022. Mr Wagener appeared for SARDA and Mr Joseph SC appeared for the Second Defendant.
3. Mr Joseph submitted that my decision is not susceptible to appeal whereas Mr Wagener submitted it is. In my view it is unnecessary to decide this issue as I am of the view that the application should, in any event, be refused.

4. While I agree with Mr Wagener's contentions about how important it is that attorneys who act on behalf of others are duly mandated, including for the rule of law and the administration of justice, this cannot assist SARDA in this case for the reasons set out in my judgment. The arguments advanced during the hearing were not sustainable on the papers before me.

5. The case sought to be advanced in the application for leave to appeal is a somewhat different case. It is set out in the application for leave to appeal and I do not repeat it here. But that case is also not made out on the papers before me. To the extent that reliance is placed on the last paragraph of the e-mail attached as Annexure IS5, this is misplaced in view of the principles articulated in *Theletsane*,¹ *Swissborough Diamond Mines*² and *D&F Wevell Trust*³. To the extent that reliance is placed on paragraph 12.3 of the replying affidavit, it is trite that it is not open to a party to make out its case in reply.

6. Moreover, it was again quite apparent during argument in the application for leave to appeal, as it was during the initial hearing and indeed as appears from the papers, that the real issue in respect of which SARDA requires clarity is whether Sediek Sadien or the Sadien Family is the correct party, ie the Second Defendant. I dealt with this issue in paragraph 18 of my judgment. That important issue cannot be resolved via these Rule 7 proceedings.

¹ *Administrator of Transvaal and Others v Theletsane and Another* [1990] ZASCA 156; 1991 (2) SA 192 (AD); [1991] 4 All SA 132 (AD).

² *Swissborough Diamond Mines (Pty) Ltd and others v Government of the Republic of South Africa and others* 1999 (2) SA 279 (T) at 324F-325C.

³ *Minister of Land Affairs and Agriculture and others v D & F Wevell Trust and others* 2008 (2) SA 184 (SCA) at para 43.

7. I make the following order.

7.1. The application for leave to appeal is dismissed.

7.2. There is no order as to costs.



COWEN J

Date of hearing: 15 June 2022

Date of judgment: 21 June 2022

Appearances:

SARDA: Mr Wagener

Second Defendant: Mr Joseph SC instructed by Ighsaan Sadien Attorneys