



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 13508/2013**

*Not reportable*

*Not of interest to other Judges*

In the matter between:

**TSHILANDA ODETTE KANDE**

*8/12/2015*

First Applicant

**TSHILANDA ODETTE KANDE**

(On behalf of **JONATHAN BETU KANDE**)

Second Applicant

and

**CHAIRPERSON: REFUGEE APPEAL BOARD**

First Respondent

**REFUGEE STATUS DETERMINATION OFFICER**

Second Respondent

**MINISTER OF HOME AFFAIRS**

Third Respondent

**DIRECTOR GENERAL: DEPARTMENT OF HOME AFFAIRS**

Fourth Respondent

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**J U D G M E N T (Leave to appeal)**

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**MAKGOKA, J**

[1] This is an application for leave to appeal against the whole judgment and order of this court made on 7 September 2015, in terms of which the applicants' application for the setting aside the decision of the Refugee Appeal Board was dismissed. The applicants were non-suited mainly for the delay in bringing the application.

[2] The common law test in an application for leave to appeal has always been whether there are reasonable prospects that another court, given the same set of

facts, might arrive to a different conclusion. That test has been codified by s 17 of the Superior Court Act 10 of 2013, in terms of which leave to appeal may only be given where a judge is of the opinion that the appeal would have reasonable prospects of success.

[3] I conclude that the appeal would have any reasonable prospects of success, mainly for two reasons. First, because another court might well take a different view with regard to the computation of the 180-day period stipulated in PAJA. I considered that period from the date on which the application was served by the sheriff, which would take the application out of the 180-day period. Another court might find that the earlier, abortive service on the department was good service, which would have the effect that the application was brought within the 180-day period. Second, another court might find that the period of delay during which internal remedies had to be exhausted, should not be attributable to the applicants and should not be taken into account.

[4] In the result I make the following order:

1. Leave is granted to the applicants to appeal to the Full Court of this Division.
2. The costs of this application are costs in the appeal.



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T.M. Makgoka  
Judge of the High Court

Judgment delivered: 8 December 2015

Appearances:

For the Applicants: Adv. N. Ferreira  
Adv. M. Stubbs

Instructed by: Lawyers for Human Rights, Pretoria

For the First, Second,  
and Fourth Respondents: Adv. M. Bofilatos SC

Instructed by:

State Attorney, Pretoria