

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS688/16

In the matter between:

TRANSPORT AND ALLIED WORKERS UNION

First Applicant

TEBOHO JONAS SEKHOTO & 35 OTHERS

**Second to Further
Applicants**

and

SCOPEFUL 21 (PTY) LTD t/a MALUTI BUS SERVICE

Respondent

Decided: In chambers

Delivered: 26 January 2024 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 26 January 2024.)

JUDGMENT: LEAVE TO APPEAL

PHEHANE, J

Introduction

[1] The applicants seek leave to appeal the whole judgment and order of this Court dated 14 August 2023.

[2] The application is opposed.

Test to succeed in an application for leave to appeal

[3] Section 17(1) of the Superior Courts Act¹ states 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;
- (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.’

[4] The test to succeed in an application for leave to appeal is now settled. It is a stringent test.² The applicant must show that another Court would come to a different conclusion on the same facts or there exists some other compelling reason why the appeal should be heard.

[5] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*,³ the Supreme Court of Appeal (SCA) stated as follows:

‘[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 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.

¹ Act 10 of 2013.

² *Minister of Home Affairs & Another v Fireblade Aviation Ltd and Others* [2018] ZASCA 36 (28 March 2018); *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting Director of Public Prosecutions & Others* [2016] ZAGPPHC 489; *Mont Chevaux Trust v Goosen and others* 2014 JDR 2325 (LCC) at para [6].

³ [2016] ZASCA 176; [2016] JOL 36940 (SCA) at paras [16] – [17].

[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.' [Own emphasis]

[6] In *Martin & East (Pty) Ltd v National Union of Mineworkers and others*,⁴ the Labour Appeal Court cautioned that this Court must be cautious in granting leave to appeal and should consider the competing interests of the parties in ensuring a balance between the expeditious resolution of a dispute and the rights of the losing party.

[7] I have considered the grounds of appeal and the written submissions by both parties and I have once more considered my judgment. The grounds of appeal are a repeat of the contentions of the applicant before the Court, with some novel contentions that were not pleaded and were not for this Court to determine, such as the limitation of the applicants' constitutional right to strike. Recently, in *The Road Accident Fund v Taylor and Related Matters*,⁵ the SCA affirmed the principle that the law constrains a Court to decide only the issues that the parties have raised for determination.

[8] I am of the view that another Court would not come to a different conclusion on the same facts and there exists no compelling reason why the appeal should be heard.

Conclusion and costs

[9] The grounds of appeal lack merit and are a re-hashing of the applicant's contentions at trial. The conduct of the applicants (which include a trade union and all legally represented) in raising new contentions for the first time in this appeal is frowned upon.

⁴ (2014) 35 ILJ 2399 (LAC) at 2405 to 2406.

⁵ [2023] ZASCA 64; 2023 (5) SA 147 (SCA) at para [31].

[10] Therefore, in terms of the provisions of section 162(2)(b) of the Labour Relations Act,⁶ I exercise my discretion to make an order against the applicants for the payment of costs.

[11] In the premises, the following order is made:

Order:

1. The application for leave to appeal is dismissed.
2. The applicants are to pay the costs.

M. T. M. Phehane
Judge of the Labour Court of South Africa

⁶ Act 66 of 1995, as amended.