



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JS 211/2024

In the matter between:

**SOUTH AFRICAN MUNICIPAL WORKERS
UNION obo MAHLANGU AND 44 OTHERS**

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

Decided: In Chambers

Judgment: 26 May 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 26 May 2025.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J

[1] The Applicant applied for leave to appeal against the whole judgment and order, delivered on 31 January 2025.

[2] The Applicant raised numerous grounds for leave to appeal and filed submissions in support of its grounds for appeal.

[3] I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof. Both parties filed comprehensive submissions, which I have taken time to peruse and consider and I do not intend to repeat those herein.

The test for leave to appeal

[4] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act¹ (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.²

[5] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion.

[6] It is further trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

¹ Act 66 of 1995, as amended.

² See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

[7] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,³ this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

‘The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015).’

[8] In *Cook v Morrison and another*⁴ the SCA it was held that:

‘... the existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law, or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice, or

³ (2016) 37 ILJ 1485 (LC) at para 3.

⁴ [2019] 3 All SA 673 (SCA), 2019 (5) SA 51 (SCA) at para 8.

that the matter is of very great importance to the parties or to the public. This is not a closed list.’

[9] In deciding this application for leave to appeal, I am also guided by the *dicta* of the Supreme Court of Appeal (SCA) where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*⁵ that:

‘...The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.’

This application

[10] I have considered the submissions made in support and in opposition of the grounds for appeal and applying the applicable test, I am not convinced that the Applicant has made out a case for leave to appeal to be granted.

[11] This matter concerns the application of established and trite principles governing the position regarding condonation. There is no novel issue, nothing unique or any legitimate dispute about the applicable legal principles involved. In short: there is no legitimate dispute on the law and the Applicant is unable to cross this hurdle.

[12] There is also not a reasonable prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion.

[13] I will refer to one of the grounds for leave to appeal to illustrate that there is no prospect of success. The Applicant submitted that this Court erred and misdirected itself when relying on the new Rule 24 of the Labour Court Rules to dismiss the application for condonation. The Applicant’s complaint is that Rule 24 came into operation on 17 July 2024, long after the statement of claim was filed and it is trite

⁵ 2013 (6) SA 520 (SCA) at para 24.

that the said Rules do not apply retrospectively and 'the application and reliance on Rule 24 is misplaced.'

[14] This Court considered the issue of prejudice and held in paragraphs 67 and 68 of the judgment that:

In casu there are 45 employees before Court, seeking retrospective reinstatement from their dates of dismissal in 2023, as per their statement of case. The Practice Manual previously provided and Rule 24 of the Labour Court Rules expressly provides that where the issue in dispute concerns the dismissal of 10 or more employees who seek reinstatement and a notice of intention to defend is filed, it must be brought to the attention of the Judge President, who may then appoint a Judge immediately to undertake the case management of the file, to ensure an expeditious hearing. This is to allow for hearing on an expedited basis where the matter involves a large number of applicants and where the relief sought is reinstatement, as the consequences and prejudice, if such a matter is only dealt with years later and reinstatement is ordered, are severe and obvious.

The delay is even more prejudicial considering that Rule 24 provides for an expeditious hearing when a large number of applicants seek reinstatement. *In casu* the Applicants were dismissed in August or September 2023 and in January 2025 this matter is not one step closer to finality.

[15] A proper perusal of the aforesaid paragraphs shows that the reference to Rule 24 has been made in the context of what was previously provided for in the Practice Manual. Clauses 10.2.1 and 10.2.2 of the Practice Manual, which applied at the time the Applicant's statement of case was filed and which applied until the new Rules for the Labour Court became effective, provided almost *verbatim* what is provided for in Rule 24. The reference to Rule 24 was made in the context of what was provided for previously in the Practice Manual and there was no independent reliance on Rule 24, nor was it applied as such. The Applicant's submission that Rule 24 was relied on to dismiss the application for condonation is misconceived and ignores the context within which reference to Rule 24 was made.

[16] In the premises I make the following order:

Order

1. The application for leave to appeal is dismissed with no order as to costs.

Connie Prinsloo
Judge of the Labour Court of South Africa