**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

**Case no: JR 991 / 22**

In the matter between:

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| **CITY OF TSHWANE METROPOLITAN MUNICIPALITY** | **Applicant** |
| and | |
| **K KLEINOT *N.O.*** | **First Respondent** |
| **SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL** | **Second Respondent** |
| **SOUTH AFRICAN MUNICIPAL WORKERS UNION** | **Third Respondent** |
| **INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION** | **Fourth Respondent** |
| **SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION** | **Fifth Respondent** |

**AND:-**

**Case no: JR 1946 / 23**

In the matter between:

**CITY OF TSHWANE METROPOLITAN MUNICIPALITY** **Applicant**

and

**E HAMBIDGE *N.O.*** **First Respondent**

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL** **Second Respondent**

**SOUTH AFRICAN MUNICIPAL WORKERS UNION** **Third Respondent**

**INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION** **Fourth Respondent**

**SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION** **Fifth Respondent**

**Decided: In Chambers**
**Delivered: 15 July 2025**

**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 July 2025**

**<u>Summary</u>: Application for leave to appeal – no proper grounds made out – application for leave to appeal dismissed**

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**JUDGMENT – LEAVE TO APPEAL**

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**SNYMAN, AJ**

Introduction

[1] In this case, there were two individual review applications brought by the applicant. Both applications related to decisions made by exemption panellists appointed by the South African Local Government Bargaining Council (SALGBC), concerning two separate exemption applications brought by the applicant. The exemption panellists refused exemption from the wage increase provisions contained in a wage and conditions of employment collective agreement concluded in the SALGBC in 2021. The review applications were brought by the applicant in terms of section 158(1)(g) of the Labour Relations Act[1] (LRA).

[2] The matter came before me for argument on 28 and 29 November 2024. After hearing argument by all parties, I reserved judgment. I subsequently handed down written judgment on 7 May 2025, in terms of which I granted both review applications, and reviewed and set aside the rulings of both exemption panellists refusing the respective exemptions. In the application under case number JR 991 / 22, I remitted the exemption application back the SALGBC for determination *de novo* by an exemption panellist other than the first respondent. In the application under case number JR 1946 / 23, I substituted the exemption ruling with a ruling upholding the exemption application and granting an exemption to the applicant from clauses 6.6, 6.7, 7.3, 8.1, 9.1.3 and 10.1.3 of the 2021 Wage Agreement of the SALGBC.

[3] The third and fourth respondents, being dissatisfied with the orders and judgment granted against them in the review application under case number JR 1946 / 23, filed individual applications for leave to appeal. The third and fourth respondents have not sought leave to appeal in respect of the order granted under case number JR 991 / 22. That order therefore stands, and will not be considered further. When I make reference to the applications for leave to appeal in this judgment, it must be considered to only refer to the orders I granted under case number JR 1946 / 23. I shall also, in this judgment, refer to the third respondent as '*SAMWU*' and the fourth respondent as '*IMATU*', for ease of reference.

[1] Act 66 of 1995 (as amended).

[4] SAMWU and IMATU both filed their applications for leave to appeal on 30 May 2025. IMATU filed written submissions in support of its application for leave to appeal on 13 June 2025. The applicant has opposed both these applications for leave to appeal. In opposing the applications for leave to appeal, the applicant filed written submissions on 8 July 2025. The leave to appeal applications are thus ripe for determination.

[5] Rule 67(6) of the Labour Court Rules provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason to direct otherwise and will therefore determine the leave to appeal applications by SAMWU and IMATU in chambers.

Analysis

[6] Leave to appeal is not there for the asking. This is evident from section 17(1)(a) of the Superior Courts Act[2], which provides that:

> ‘(a) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:
> (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 a matter under consideration.’

[7] In *J & L Lining (Pty) Ltd v National Union of Metalworkers of SA and Others (2)*[3] the Court summarized the legal position that applies when a litigant seeks leave to appeal from this Court, as follows:

> ‘Leave to appeal is not there for the asking. When deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another court would come to a different conclusion to that of the court a quo, or in other words, whether the appeal would have a reasonable prospect of success. This was summarised in *SA Clothing & Textile Workers Union & others v Stephead Military Headwear CC*, as follows:

[2] Act 10 of 2013.
[3] (2019) 40 ILJ 1303 (LC) at para 5.

'It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal.''

[8] As to the meaning of '*reasonable prospects of success'*, the Court in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*[4] said:

'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.

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] Next, and as to what would constitute a compelling reason for another Court to entertain the appeal, the *Court in Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*[5] had the following to say:



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[4] [2016] JOL 36940 (SCA) at paras 16 – 17. See also *Ramakatsa and Others v African National Congress and another* [2021] JOL 49993 (SCA) at para 10, where it was held: '*The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist …*'.

[5] 2020 (5) SA 35 (SCA) at para 2. See also *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* 2013 (3) SA 315 (SCA) at para 5; *Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others* 2016 (3) SA 317 (SCA) at para 23; *Tshwane City and Others v Nambiti Technologies (Pty) Ltd* 2016 (2) SA 494 (SCA) at para 6.

‘... A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. ...’

[10] I must say, from the outset, that the applications for leave to appeal by both SAMWU and IMATU raise very little in the form of legal grounds. SAMWU and IMATU both contend that the authorities I relied on when applying the exemption principles in this case only apply to the private sector, and not the public sector. There is no foundation for this submission. It simply does not matter if an industry (or sector) level collective agreement applies in the public sector or private sector. The LRA draws no distinction in this regard. It is trite that for any industry (sector) collective agreement, there must be an exemption process as an essential requirement thereof. It is then nothing short of artificial to draw some sort of distinction between the public and private sector in this regard where it comes to deciding such exemptions. This can perhaps be best illustrated by the following *dictum* in *Chirwa v Transnet Ltd and Others*[6]: *‘… The LRA does not differentiate between the State and its organs as an employer, and any other employer. Thus, it must be concluded that the State and other employers should be treated in similar fashion*’. It was affirmed in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal*[7] as follows:

‘Historically, public sector employment and private employment were regulated by distinct legal regimes in South Africa. Since the adoption of the LRA, public sector employment has largely been synchronized with the legal regulation of employment in the private sector. Section 23(1) of the Constitution further provides that '[e]veryone has the right to fair labour practices'. There is thus no longer a general distinction in principle between the protections afforded to private and public sector employees.’

[11] IMATU, in seeking leave to appeal, places some emphasis on the role of the financial expert that assisted the exemption panellist, as a basis to criticize my interference with the exemption ruling. But the problem was that the financial expert’s role and input was not apparent. There was no analysis of the financial information provided by the applicant conducted by the expert apparent from the record. In fact,

[6] 2008 (4) SA 367 (CC) at para 66.
[7] (2014) 35 ILJ 613 (CC) at para 30.

the general conclusion by the panellist, as supported by the financial expert, was that the applicant was actually in a dire financial position. The only financial basis for finding that the increase was affordable was the narrow and single comparison an item in a budget to actual expenditure, as I dealt with in my judgment. If that is how a financial expert advised the panellist, then that was a misdirection. Judges do bring their own knowledge and experience to bear in deciding matters, and do not have to solely defer to the views of financial experts, especially if it is apparent that those views are misdirected. I do not consider that IMATU has made out a substantiated ground for leave to appeal in this regard. It makes abstract submissions without dealing with the real facts, as I have dealt with in my judgment.

[12] Further, IMATU contends that I erred by setting aside the panellist’s decision on the basis of flaws in the panellist’s reasoning, whereas dialectical unreasonableness is not a proper ground for review. However, I did nothing of the sort. Even though I considered the panellists reasoning for refusing exemption to be misdirected, I specifically went on to consider whether a finding of refusing exemption was justified, rational and reasonable, on all the facts before the panellist and the actual issue she was required to consider. The point is that if the facts supported the notion that exemption be refused, then the outcome the panellist arrived at would be reasonable, and I would not have interfered with it. But the facts showed the opposite. On the facts, this was a case where, as a rational, reasonable and justifiable conclusion, exemption should have been granted because the increase was not affordable, and for that reason, the ruling had to be reviewed and set aside. IMATU appears to completely misconstrue my judgment, presumably in an effort to make out a case for leave to appeal that does not exist. IMATU has no prospects of success on appeal in this regard.

[13] According to IMATU, a private sector exemption model was not appropriate in this case. I have already dealt with this to some extent above. Perhaps this view adopted by IMATU lies at the very heart of the financial crisis local authorities find themselves in. The crisp point is, contrary to what appears to be suggested by IMATU, that local authorities do not exist for the primary purpose to provide jobs and salaries to employees. They exist to provide services to residents. And where service delivery to residents is compromised because of a dire financial position as was undoubtedly the case in this instance, then all must contribute to bring matters back

onto even keel. That would include the employees forfeiting increases. To there no special status afforded to employees in a local authority that places them above all other means of cost cutting and affords them some sort of immunity in this regard. This is in effect what IMATU is saying. Such a suggestion, in my view, is nonsensical. I do not believe there exists any prospects of success on appeal in this regard.

[14] SAMWU contends that I failed to recognise that they challenged the reliability of the financial records produced by the applicant in the exemption application. This is simply not correct. What I held was that SAMWU failed to offer any financial information in opposition to or different to the information provided by the applicant. It is entirely unhelpful to simply dispute what is on offer in an exemption application where it comes to financial information (which was very detailed *in casu*), but offer absolutely nothing in contradiction. This is especially so, considering that the panellist herself found, on the facts, that the applicant was in a dire financial position. SAMWU has no prospects of success on appeal relating to this finding.

[15] I never found, despite what is contended by SAMWU in its leave to appeal application, that because the applicant did not budget for the increase, it was exempted from paying it. In fact, if proper regard is had to the reasoning contained in my judgment, I was at pains to point out that the failure to budget for an increase is not cause *per se* to qualify for exemption, and that the MFMA cannot be used as some or other tool to use to get exemption on the basis that the increase is not budgeted for. I made it clear that what needed to rather be explored and ascertained is why the increase was not budgeted for. Or differently put, the real enquiry is whether there was just and reasonable cause not to budget. Only if so, the failure to budget may lead to exemption. If not, then the failure to budget is immaterial. SAMWU misconstrues my judgment, and as such, it has no prospects of success on appeal.

[16] As to the argument relating to collective bargaining being undermined by granting exemption, I have dealt with this in detail in my judgment. Both SAMWU and IMATU have advanced no cogent reasoning or grounds that convinces me otherwise in this regard. Again, and just to describe it as simply as possible, what would be point of prescribing that the ability to obtain exemption is an essential component of industry (sector) collective bargaining, only to then turn around and say that the

granting of such exemption undermined that collective bargaining. It makes no sense, and is contrary to the law. The authorities dealing with this issue are in my view clear. SAMWU and IMATU have no prospects of success on appeal in this regard.

[17] The affordability test is a determination on the facts. On these facts, the increases were not affordable. The panellist's findings that the increases were affordable was not based on any contradiction of the financial information provided by the applicant that established its dire financial position. Even the panellist accepted this to be true. However, the panellist determined affordability on an entirely wrong premise, when the financial information showed the increases were not affordable. SAMWU and IMATU have not advanced anything in their applications for leave to appeal to convince me that another Court could come to a different conclusion in this regard, especially considering the factual findings I had made in this regard. I believe there is no case for leave to appeal in this respect.

[18] All the above considered, I thus conclude that SAMWU and IMATU have failed to show that there exists a reasonable prospect that another Court would come to a different conclusion, and in my view, they have little prospect of success on appeal. This matter also does not concern any issue of particular public interest, or any question of law that requires determination by an appeal Court. The application for leave to appeal thus falls to be dismissed. I believe the following *dictum* from the judgment in *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*[8] to also be appropriate in deciding to refuse leave to appeal:

> '… The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the court a quo, need to be cautious when leave to appeal is granted. …'

[19] This only leaves the issue of costs in the applications for leave to appeal. I have a wide discretion where it comes to the issue of costs, by virtue of the provisions of section 162(1) of the LRA. I intend to follow the same approach as set out in my original judgment and the reasons contained therein, and make no order as to costs.

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[8] (2014) 35 *ILJ* 2399 (LAC) at 2405J-2406A

[20] In the premises the following order is made:

<u>Order</u>

1. The third and fourth respondents' application for leave to appeal under case number JR 1946 / 23 is dismissed.

2. There is no order as to costs.

S. Snyman

Acting Judge of the Labour Court of South Africa