

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable
Case no: JR1731/21

In the matter between:

PROSPER MAPHOSA & OTHERS

Applicants

and

NEW MODEL PRIVATE COLLEGE

1st Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

2nd Respondent

GLORIA NCALA, N.O.

3rd Respondent

Heard in chambers: 21 July 2025

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MYBURGH, AJ

[1] The applicants (the 3rd to 26th respondents *a quo*) have brought an application for leave to appeal against my judgment herein delivered on 3 March 2025 (the judgment). They have also brought an application for condonation for the late delivery of their supplementary grounds for leave to appeal and their submissions in support of the application for leave to appeal. The first respondent (the applicant *a quo*) also seeks condonation for the late delivery of its opposing submissions (filed on 24 June 2025).

[2] To begin with the applications for condonation, I am persuaded that the respective parties have made out a proper case for the grant of condonation and I am thus inclined to grant condonation.

[3] Turning to the application for leave to appeal, the thrust of the applicants' case appears to be that – by operation of section 198B(5) (read with section 198B(3)) of the LRA – the applicants were deemed to be employed indefinitely at all material times. If this were so, then it may render vulnerable my finding that a contract of employment capable of being suspended was not in existence in 2021 (judgment: para 31). Although it is common cause between the parties that the applicants did not advance a section 198B case before me on review, given that it predominantly involves a question of law, it seems to me that the LAC may well be entitled to consider it on appeal. I am thus persuaded that the applicants have reasonable prospects of success on appeal and am thus inclined to grant leave to appeal.

[4] The applicants have also indicated that they intend to bring an application to introduce new evidence on appeal – it being the effect that the first respondent's erstwhile attorneys were not authorised to represent it before me, because they had closed-down by that time, with the result (so it is contended) that the review proceedings were nullified. While it is for the LAC and not me to determine this issue, for present purposes, I cannot discount its possible success.

[5] In the circumstances, the following order is made:

- a) The applicants are granted condonation for the late delivery of their supplementary grounds of appeal and their submissions in support of their application for leave to appeal;
- b) The first respondent is granted condonation for the late delivery of its submissions opposing the application for leave to appeal;
- c) The applicants are granted leave to appeal against the whole of the judgment;
- d) The costs of the application for leave to appeal shall be costs in the appeal.

Myburgh, AJ

Acting Judge of the Labour Court of South Africa

Representatives

For the applicants: Ditabe and Wagner Attorneys

For the first respondent: Mafenya Attorneys