



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR2155/2021

In the matter between:

HARMONY GOLD MINING COMPANY LTD

Applicant

and

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

COMMISSIONER SILAS SEGOLE N.O.

Second Respondent

NUM obo EVON SIBONGILE JAPHTA

Third Respondent

Decided: In Chambers

Delivered: 14 August 2025

JUDGMENT – LEAVE TO APPEAL

PHAKEDI, AJ

Introduction

[1] This is an opposed application for leave to appeal against the judgment granted by this Court on 06 June 2025. The applicant served the third respondent with its application on 30 June 2025 but only filed same to the registrar on 09 July 2025 outside the period prescribed for filing applications for leave to appeal as envisaged in Rule 67 (2) of the Labour Court Rules.

[2] This court does not intend to deal with each of the grounds of appeal raised by the applicant and this should not be construed to mean that such grounds were not considered. Both parties have filed their submissions in terms of the Rules and same were duly considered in formulating this judgment.

[3] At the onset, it must be noted that the allegations levelled against the third respondent read:

‘[Breaching] housing contract in that you sublet Flat No 56 Park Place which is allocated to you as per application form dated 29.01.2010.’

[4] The provisions of the Employee Occupation Agreement which the third respondent allegedly breached stated:

‘3.1 Only the employee and his/her bona fide dependents shall permanently reside on the premises allocated to him/her.

3.2 The employee is not permitted to sublet the premises or portion thereof or lodge or board persons other than bona fide dependents. An employee found subletting might be requested to vacate the property...’

[5] The Applicant dismissed the third respondent and she referred her dispute to the Commission for Conciliation Mediation and Arbitration (CCMA) where the Commissioner found that her dismissal was substantively unfair and awarded reinstatement with back pay. Upon receipt of the arbitration award the Applicant approached this Court seeking to review and set aside the award.

[6] Having considered the matter and submissions from both parties, the Court came to the conclusion that the decision reached by the Commissioner is one which a reasonable decision-maker could have reached based on all the evidence and material presented during arbitration proceedings.

Applicable test for leave to appeal

[7] The application is governed by section 17(1) of the Superior Courts Act¹ which provides:

‘17 Leave to appeal

(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.’

[8] The above-mentioned section also applies to applications for leave to appeal filed in the Labour Court as envisaged in section 151 (2) of the LRA².

[9] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and another*³ the Supreme Court of Appeal said the following

‘[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

¹ Act. 10 of 2013.

² This section provides that ‘the Labour Court is a superior court that has authority inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a Division of the High Court of South Africa has in relation to the matters under its jurisdiction.’

³ (1221/2015) [2016] ZASCA 175.

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.

[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.'

[10] The Labour Appeal Court (LAC) in *Martin and East (Pty) Ltd v National Union of Mineworkers and others*⁴ emphasised that this court ought to be cautious when leave to appeal is granted, as should the LAC when petitions are granted taking into account that the Labour Relations Act⁵ (LRA) was designed to ensure an expeditious resolution of labour disputes. The statutory imperative 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.

[11] The Applicant takes an issue with paragraph 30 of the judgment wherein this Court indicated that the information that Molefi was scared and intimidated to testify was raised for the first time in review proceedings. Even if this court erred in that regard, this error would not change the outcome of the review proceedings. The applicant's submissions in respect of the failure of the Commissioner to deal with the hearsay evidence were dealt with in the judgment and shall not be repeated herein.

[12] After careful consideration of all the grounds for leave to appeal submitted by the applicant, this Court is not persuaded that this kind of a case should remain on the court rolls subverting the primary purpose of the LRA, namely, expeditious resolution of labour disputes. This Court is not satisfied that the LAC would treat the

⁴ (2014) 35 ILJ 2399 (LAC) at pg 16.

⁵ Act 66 of 1995, as amended.

factual matrix of this case differently nor that the applicant has raised novel points of law which requires the LAC's intervention.

[13] In conclusion, it is found that the applicant failed to demonstrate that the appeal would have reasonable prospects of success and that compelling reasons exist for the appeal to be heard. Accordingly, the following order is made:

Order

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

GC Phakedi

Acting Judge of the Labour Court of South Africa