



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS 626/2020

In the matter between:

ICTU obo ZUKISANI TSHOLOBA & OTHERS

Applicant

and

**SOUTH AFRICAN BROADCASTING CORPORATION
(SOC) LIMITED**

Respondent

Decided: In Chambers
Delivered: 05 September 2025

**JUDGEMENT:
APPLICATION FOR LEAVE TO APPEAL**

MATYOLO, AJ

Introduction

[1] This is an application for leave to appeal to the Labour Appeal Court, against the judgment and order of the Labour Court delivered on 24 June 2025.

Grounds of appeal

[2] The grounds upon which the applicants rely for their application for leave to appeal are set out fully in the application for leave to appeal. In essence, the applicants contend that the Court erred in finding that dismissal was an appropriate sanction in the circumstances of the matter before the Court.

[3] Specifically, the applicants raise the following issues with the judgment of this Court:

3.1 The Court erred in recording that the issues for determination, in accordance with the agreement concluded by the parties, were limited to the question of whether the strike that the applicants embarked on in the form of the go-slow during February 2018 was a protected strike in terms of section 67 of the Labour Relations Act¹ (LRA) or not. The submission of the applicants is that the Court ought to have regard that the agreement between the parties also invoked a question of whether the sanction meted out was disproportionate or not.

3.2 The Court erred by stating that:

3.2.1 It could not find any reason to interfere with the decision of the panel;

3.2.2 The dismissal was the appropriate sanction;

3.2.3 The dismissal was fair;

3.2.4 The Court ought to have found that the respondent did not argue that the dismissal was the appropriate sanction under the circumstances, and that the charge for which the employees were found guilty of by the panel was the less serious charge and that, in the circumstances, dismissal was a severe sanction;

¹ Act 66 of 1995, as amended.

3.2.5 The sanction of dismissal does not take into consideration the mitigating factors, such as the fact that the employees were already not found guilty on one of the two charges, which was the more serious charge;

3.2.6 The personal circumstances of the applicants were not taken into consideration by the disciplinary panel when deciding on the appropriate sanction;

3.2.7 The sanction of dismissal should be substituted with a sanction of a final written warning valid for 12 months.

[4] Before I deal with the grounds for leave to appeal, I wish to set out the applicable legal position in the determination of an application for leave to appeal.

Principles governing applications for leave to appeal.

[5] Applications for leave to appeal are governed by sections 16 and 17 of the Superior Courts Act². Section 17 provides 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.’

[6] In *Acting National Director of Public Prosecution & others v Democratic Alliance in Re: Democratic Alliance v National Director of Public Prosecutions &*

² Act 10 of 2013.

*others*³, Ledwaba DJP writing for the full court referred with approval to the following dictum appearing in *Mont Chevaux Trust v Goosen*⁴ in which Bertelsmann J held as follows:

‘The threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Conwright & others* 1985 (2) SA 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.’

[7] In *S v Smith*⁵, the Supreme Court of Appeal held that the test of reasonable prospects of success postulates a dispassionate decision, based on facts and the law, that a Court of appeal could reasonably arrive at a conclusion that is different from that of the trial Court.

[8] Therefore, to succeed, an appellant must convince the Court that proper grounds exist for succeeding in the appeal and that those grounds are not remote. In other words, there must be a sound, rational basis for the conclusion that there are prospects of success.

[9] The Labour Appeal Court in *Martin & East (Pty) Ltd v National Union of Mineworkers & Others*⁶ called for caution as to when leave to appeal is to be granted. It drew attention to the fact that the statutory imperatives of expeditious and effective resolution of disputes necessarily require that appeals are limited to those matters in which there are reasonable prospects that a factual matrix could receive a different treatment, or there is some legitimate dispute on the law.

³ (19577/09) [2016] ZAGPPHC 489 (24 June 2016) at para 25.

⁴ 2014 JDR 2325 (LCC) at para 6.

⁵ 2010 (1) SACR 576 (SCA).

⁶ (2014) 35 ILJ 2399 (LAC) at 2406 A.

[10] With regard to this application for leave to appeal, this Court is unable to find that any of the grounds are sustainable. The Court *a quo* considered the submissions relating to the appropriateness of sanction and found that the applicants knew what they needed to do in terms of the provisions of the LRA, the terms of the collective agreement and the policies of the company. In this regard, the applicants had no reason to embark on the unprotected strike.

[11] In coming to the conclusion that dismissal was not unfair, this Court considered the gravity of the conduct and in this regard, took guidance from the decisions of the Constitutional Court and the Labour Appeal Court on the impact of the failure to provide a proper notice of an impending strike on the employer, in particular the fact that failing to provide a proper notice may frustrate labour peace and economic development which are important purposes of the LRA.

[12] I have also considered the fact that this matter does not raise any novel points of law that need to be dealt with by the Labour Appeal Court. In this regard, I am also not persuaded that there are reasonable prospects that the factual matrix in this case might receive a different treatment on appeal.

[13] Accordingly, the application for leave to appeal is dismissed with no order to costs.

X Matyolo

Acting Judge of the Labour Court of South Africa