



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR443/23

In the matter between:

MAXWELL STHEMBISO NTOMBELA

Applicant

and

**METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL**

First Respondent

COMMISSIONER CHARMAINE HALIAN STRIPP

Second Respondent

CIRCUIT BREAKER INDUSTRIES (PTY) LTD

Third Respondent

Decided: In Chambers

Delivered: 05 September 2025

JUDGMENT – LEAVE TO APPEAL

PHAKEDI, AJ

Introduction

[1] This is an unopposed application for leave to appeal against the whole judgment and order granted by this Court on 15 May 2025. The third respondent filed its submissions as envisaged in Rule 67 (5) of the Labour Court Rules¹.

[2] The application for leave to appeal was filed on time and within the prescribed timeframes. However, the file was only brought to the attention of this Court on or about Thursday, 29 August 2025.

[3] This Court does not intend to deal with each of the grounds of appeal raised by the third respondent, and this should not be construed to mean that such grounds were not considered. The third respondent is aggrieved that the Court granted condonation for the late filing of the review application based on the inadequate explanation proffered by the applicant. It is submitted that the Court ought not to have considered the applicant's prospects of success in the review application because the applicant did not provide a detailed account for the full period of delay for the late filing of the review application and the late filing of the supplementary affidavit.

[4] The applicant, despite being properly served, did not oppose this application.

Applicable test for leave to appeal

[5] The application is governed by section 17(1) of the Superior Courts Act² 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

¹ GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

² Act. 10 of 2013.

- (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] The abovementioned section also applies to applications for leave to appeal filed in the Labour Court as envisaged in section 151 (2) of the Labour Relations Act³.

[7] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and another*⁴, 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 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.’

[8] The Labour Appeal Court (LAC) in *Martin & East (Pty) Ltd v National Union of Mineworkers and others*⁵ 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 LRA was designed to ensure an expeditious resolution of labour

³ Act 66 of 1995, as amended. 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 matters under its jurisdiction.’

⁴ 2016 JDR 2214 (SCA).

⁵ (2014) 35 ILJ 2399 (LAC) at 2405I – 24406A.

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.

[9] The Court, having considered pleadings and submissions from both parties, substituted the award and ordered retrospective reinstatement of the Applicant.

Analysis

[10] It is trite that in granting condonation, the Court exercises a discretion. The LAC may only interfere with the exercise of this discretion if it is found that in exercising its discretionary powers, the Court acted capriciously, upon wrong principles, in a biased manner, for insubstantial reasons, or committed a misdirection, or an irregularity or exercised its discretion improperly or unfairly.⁶

[11] The third respondent submits that the Court erred in granting condonation where the applicant had failed to provide a full account for the delay, the delay was excessive, and the applicant did not have prospects of success. This Court having considered submissions by the third respondent, is of the opinion that the LAC will come to a different conclusion on the exercise of discretion and whether the review application ought to have been determined.

[12] In *Fairtrade Tobacco Association v President of the Republic of South Africa*⁷, the Full Court held that:

‘As such, in considering the application for leave to appeal, it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on facts and law.’

⁶ *Coates Brothers Ltd v Shanker and Others* (2003) 24 ILJ 2284 (LAC) at para 5.

⁷ (21688/2020) [2020] ZAGPPHC 311 (24 July 2020).

[13] After careful consideration of the grounds for leave to appeal submitted by the third respondent in this matter, this Court is persuaded that the application for leave to appeal should be granted. Accordingly, the following order is made:

Order

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

GC Phakedi

Acting Judge of the Labour Court of South Africa