



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS668/2024

In the matter between:

PHAKEDI ATTORNEYS INCORPORATED

Applicant

In re:

**SOLIDARITY obo DR R D VAN SCHALKWYK
AND 5 OTHERS**

Plaintiff

and

UNIVERSITY OF SOUTH AFRICA

Defendant

Considered: In Chambers

Delivered: 03 October 2025

JUDGMENT

ANESTIDIS, AJ

[1] On 19 June 2025, judgment was delivered in respect of an opposed exception brought by the defendant. The order read as follows:

- '1. The defendant's exception is dismissed;
2. The defendant must file its statement of response within 15 (fifteen) days of this Order, in terms of Rule 13 of the Labour Court Rules;

3. The defendant's legal practitioners (Advocates and Attorneys) are ordered not to charge any fee for their legal services rendered, in relation to the exception. If the defendant's legal practitioners have already been paid for their legal services in relation to the exception, they are ordered to reimburse the defendant within 60 (sixty) calendar days of the granting of this order.'

- [2] On 26 June 2025, the (now new) applicant, Phakedi Attorneys, timeously filed a notice of application for leave to appeal to the Labour Appeal Court; however, only in relation to paragraph 3 of the above Order. Thankfully, on this basis, the main action and dispute between the parties will have continued and will not be delayed or frustrated by virtue of this application for leave to appeal.
- [3] On 3 July 2025, the applicant filed its submissions in terms of Rule 67(5) of the Rules Regulating the Conduct of Proceedings of the Labour Court¹.
- [4] Naturally, this application is unopposed.

The test for leave to appeal

- [5] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act² (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.³
- [6] The test is not whether there is a possibility that another court could come to a different conclusion; the test is whether there is a reasonable prospect that another court would come to a different conclusion.
- [7] It is further trite that an applicant in an application for leave to appeal must convince the court *a quo* that he or she has reasonable prospects of success

¹ GN 4775 of 2024.

² Act 66 of 1995, as amended.

³ See: *Woolworths Limited v Matthews* [1999] 3 BLLR 288 (LC).

on appeal. Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

- [8] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,⁴ this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

'The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word 'would' in s 17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) (2015) ZALCC 7 (28 July 2015)). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes 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 (See the judgment by Davis JA in *Martin & East (Pty) Ltd v National Union of Mineworkers & others* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C536/15 6 November 2015).'

The applicant's application for leave to appeal

- [9] I have carefully considered the applicant's grounds for appeal as well as its written submissions filed in support thereof.
- [10] I accept that the applicant's application for leave to appeal is not without merit.

⁴ (2016) 37 ILJ 1485 (LC) at para 3.

However, I am enjoined to reiterate and further deal with certain issues raised in terms of this application.

- [11] Firstly, during the argument of the applicant's exception, the issue of costs was traversed between the parties and the Court. As set out in paragraph 35 of the judgment on exception, the trade union official representing the plaintiff (in the main action) conceded that the trade union does not charge its members any fees for the Labour Court action and, on this basis, the plaintiff would not be entitled to any legal costs. In light of this exchange between the parties, the issue of costs was not argued further, and, at that stage, it appeared that a punitive costs order would simply not be possible.
- [12] Secondly, when reflecting on the exception as a whole and scouring the authorities in relation to abuse of process and the bringing of hopeless, frivolous and vexatious matters to Court, I came across the relatively recent judgment of *University of South Africa v Socikwa*⁵ (*Socikwa*), which I quoted and fully endorsed in the judgment on the exception. Unfortunately, at the time of writing the judgment, I was not aware of any appeal in respect of that judgment.
- [13] Importantly, the punitive costs order made in the *Socikwa* judgment was certainly not a traditional punitive costs order nor the usual costs *de bonis propriis* whereby the legal representatives physically pay the legal costs of the other side from their own pocket. Rather, the punitive costs order in the *Socikwa* judgment was unique and a clear deviation from the usual costs *de bonis propriis* order. Accordingly, and to my mind, this rather unusual and somewhat unprecedented costs order was wholly appropriate in this matter and suitably achieved the desired purpose of having this Court show its immense displeasure towards the conduct of the applicant's legal representatives.
- [14] Thirdly, the applicant's exception was poor and tantamount to a clear abuse of process and a flagrant delay tactic. This much appears to be appreciated by the applicant itself, since it has not sought to appeal paragraphs 1 and 2 of

⁵ [2023] 8 BLLR 836 (LC).

the order handed down on 19 June 2025, in relation to the substantive merits of the ill-conceived exception.

- [15] Fourthly, our Courts have grappled with this issue on many occasions. There is a plethora of authority on this issue and the relevant principles to be applied. In this regard, I refer to an apt passage in the judgment of *Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd*⁶, which reads as follows at paragraph 35:

‘It is true that legal representatives sometimes make errors of law, omit to comply fully with the Rules of Court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are dishonesty, obstruction of the interests of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, gross incompetence and a lack of care.’ (own emphasis)

- [16] Against the above circumstances, the following issues and questions are begged: How must a Court show its displeasure with the conduct of a party and their legal representatives, where its opponents are either unrepresented or cannot claim legal costs? When acting against unrepresented or *pro bono* parties, may litigants willfully abuse court process and/or intentionally frustrate their opponents, for ulterior purposes and without fear of bearing any negative consequences, such as adverse costs orders? How are legal representatives to be admonished or punished if they are objectively seen to be, for example, dishonest, obstructing the interests of justice, irresponsible, grossly negligent, litigating in a reckless manner, misleading the court or displaying gross incompetence or a lack of care, in matters against indigent, unrepresented or *pro bono* opponents?

⁶ 2014 (3) SA 265 (GP).

[17] Perhaps some of these issues and questions can be addressed in the main appeal.

[18] Be that as it may, I accept that, even if only in relation to the procedural steps which could have been followed pursuant to the costs order made in the judgment on the exception, this limited issue and case on appeal should be heard.

[19] I, therefore, make the following order:

Order

1. Leave to appeal is granted with no order as to costs.



A Anestidis

Acting Judge of the Labour Court of South Africa