



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR2749/22

In the matter between:

INNOVATIVE STAFFING SOLUTIONS (PTY) LTD

Applicant

and

MINISTER OF EMPLOYMENT AND LABOUR

First Respondent

**NATIONAL BARGAINING COUNCIL FOR
THE ROAD FREIGHT AND LOGISTICS INDUSTRY**

Second Respondent

REGISTRAR OF LABOUR RELATIONS

Third Respondent

DEPUTY REGISTRAR OF LABOUR RELATIONS

Fourth Respondent

ROAD FREIGHT ASSOCIATION

Fifth Respondent

NATIONAL EMPLOYERS' ASSOCIATION OF SA

Sixth Respondent

CONSOLIDATED EMPLOYERS ORGANISATION

Seventh Respondent

**SOUTH AFRICAN TRANSPORT
AND ALLIED WORKERS UNION**

Eighth Respondent

**MOTOR TRANSPORT WORKERS
UNION OF SOUTH AFRICA**

Ninth Respondent

**PROFESSIONAL TRANSPORT & ALLIED
WORKERS UNION**

Tenth Respondent

TRANSPORT AND ALLIED WORKERS UNION

Eleventh Respondent

Decided: In chambers

Date: 3 October 2025

JUDGMENT: LEAVE TO APPEAL

DANIELS J

Introduction

- [1] The applicant seeks leave to appeal against my judgment handed down on 3 April 2025.

Condonation

- [2] The application for leave to appeal was delivered on 23 April and is two days late. The reason for the delay was the applicant's difficulties in serving the application on all the respondents. The applicant managed to serve the application on the respondents who participated in the hearing by 16 April but could only serve on others on 23 April. The period of the delay is short, and there is a reasonable explanation for the delay. On a conspectus of all the relevant factors, it is in the interests of justice to grant condonation. The late filing of the application for leave to appeal is condoned.

Legal principles

- [3] Section 17(1) of the Superior Courts Act No. 10 of 2013 provides that leave to appeal may only be given where the judge is of the opinion that the appeal *would* have a reasonable prospect of success or there is some other compelling reason the appeal should be heard. Leave to appeal should not be granted unless there is a sound and rational basis to

conclude that there is a reasonable prospect of success.¹ In *Martin & East (Pty) Ltd v National Union of Mineworkers & others*² the court, per Davis JA stated:

“This was a case which should have ended in the Labour Court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions. I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law, that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.”

(Own emphasis)

Grounds for leave to appeal

[4] The applicant contends that there is a reasonable prospect of success that another court *would* come to a different decision. It contends that this court erred in the following respects:

4.1 The court erred by finding that the process conducted by the third and fourth respondents were not in dispute.

¹ *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] JOL 36940 (SCA) at paras 16 – 17

² (2014) 35 ILJ 2399 (LAC) at 2406

4.2 The court conflated the decision to make a determination with the certificate which reflects the outcome of the determination. The court should have found that the certificate is not the determination.

4.3 The court erred in finding that the Minister's powers are limited to 'satisfying' himself that a determination had been made.

4.4 The court erred in finding that it was permissible for the determination to have been issued under the wrong section of the LRA.

4.5 The court erred by finding that there is no obligation on the Registrar to have regard to public or independent sources of data.

4.6 The court erred in finding that the applicant had failed to make out a case why the Registrar was required to invite submissions from non-parties. The court erred in finding that there was no requirement for a consultation process because the LRA did not require this.

4.7 The court erred by ordering the applicant to pay the costs of the application.

[5] I have considered the grounds upon which the application is based, together with the submissions filed by the first, third and fourth respondents and the submissions filed by the second respondent. I align myself with the submissions of the respondents, which I find compelling.

[6] In my view, the applicant fails to meet the high threshold for leave to appeal. In my view, there are no prospects that another court *would* come to a different decision. Accordingly, I must refuse leave to appeal.

Conclusion

- [7] The application for leave to appeal is dismissed. There is no order as to costs.

RN Daniels
Judge of the Labour Court of South Africa