

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS 657/22

In the matter between:

NOMATHAMSANQA PRIDE MSIMANGA

Plaintiff

and

JOHANNESBURG WATER SOC LTD

Defendant

Considered: In chambers

Delivered: 20 October 2025

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

EDWARDS, AJ

- [1] The applicant has applied for leave to appeal against the whole of the judgment of this court dated 22 August 2025.
- [2] The issue before this Court was whether or not it had jurisdiction to adjudicate the matter as the applicant's statement of claim had not been referred to this Court for adjudication within 90 days of the certificate of outcome being issued by the Commission for Conciliation, Mediation and Arbitration as required in terms of section 136(1) of the Labour Relations Act as it was a dispute referred to this Court in terms of section 10(6)(a) of the Employment Equity Act and the applicant had not applied for condonation.
- [3] This Court upheld the respondent's jurisdictional challenge on the basis that the applicant's proposition that the 90-day period within which an unfair discrimination dispute must be referred for adjudication ought not to apply to disputes in which the unfair discrimination complained of is continuous could

not be sustained. This Court found that the rationale for the six-month time period not applying to such disputes does not exist in respect of those disputes once a certificate of outcome has been issued as the 90-day period commences from the date of issue of the certificate, which date is fixed and will not change regardless of whether the discrimination complained of is ongoing.

- [4] In the circumstances, this Court found that the applicant was required to bring an application for the condonation of the late filing of her statement of claim, and, as she had not done so, the matter should be struck off the roll for lack of jurisdiction.
- [5] This Court exercised its discretion in making an order for costs in favour of the respondent on the basis that fairness dictated that the norm that costs should not usually be granted in this Court should be departed from as the applicant had persisted with the point that condonation was not necessary, despite the necessity for same having been pointed out by the respondent and there being no authority or basis for her stance on the point.
- [6] The applicant seeks leave to appeal on the basis that this Court erred in arriving at the above findings. The respondent opposes the application for leave to appeal.
- [7] The grounds upon which leave to appeal is sought as well as the content of the written submissions filed in support of the application for leave to appeal have, in my view, already been comprehensively addressed in this Court's judgment in this matter.

- [8] In considering this application, I have had regard for the test for applications for leave to appeal which is set out in section 17(1)(a) of the Superior Courts Act¹, that is, 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 the appeal should be heard, including conflicting judgments on the matter under consideration.
- [9] I have also taken cognisance of the comment of Davis JA in *Martin & East (Pty) Ltd v National Union of Mineworkers & others*,² that, because the Labour Relations Act, 66 of 1995 (“the LRA”) was designed to ensure an expeditious resolution of industrial disputes, courts, and particularly courts in the position of this Court, need to be cautious when leave to appeal is granted and must take great care to ensure a balance between the expeditious resolution of a dispute and the rights of the party which has lost.
- [10] Having considered the application for leave to appeal, as well as the written submissions of both parties, and having reflected on this Court’s judgment in this matter, I am not persuaded that the appeal would have a reasonable prospect of success, nor am I persuaded that there are any compelling reasons for the matter to be heard by the Labour Appeal Court.
- [11] Accordingly, the application for leave to appeal falls to be dismissed.
- [12] In the premises, the following order is made:

Order

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

M. Edwards

¹ No. 10 of 2013.

² (2014) 35 ILJ 2399 (LAC) at 2405J - F.

Acting Judge of the Labour Court of South Africa

LABOUR COURT