



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR74/2020

In the matter between:

SOLOMZI MAYE

Applicant

and

RAILWAY SAFETY REGULATOR

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

COMMISSIONER G.S. JANSEN VAN VUUREN N.O.

Third Respondent

Decided: In chambers

Date: 23 October 2025

APPLICATION FOR LEAVE TO APPEAL

DJAJE, AJ

- [1] This is a leave to appeal application against the whole judgment handed down on 13 June 2025, in which the following order was made:

'1 the matter is removed from the unopposed roll to the opposed roll for argument on Rule 71 and review application.

2 the respondent's attorneys are ordered to deliver a resolution from the 1st respondent authorising them to act on their behalf within 10 days of this order.'

[2] This application is decided on paper and is not necessary for oral arguments. The applicant filed written submissions.

[3] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act¹ 10 of 2013, which provides that:

'(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;'

[4] The applicant raised several grounds of appeal concerning the court's findings when the matter was before it for review. An *ex tempore* judgment was delivered with the order as stated above.

[5] The applicant in this case raises the same argument that was made in the main application regarding the authority to oppose litigation by the respondent and the appointment of the legal representative. The respondents properly submitted a resolution from the first respondent authorising the litigation. It was argued that, based on the previous judgment, the matter was unopposed because there was no authority, and the case should have proceeded on an unopposed basis. On the day of the hearing, the first respondent was present in court and raised a point of law that needed to be decided. However, the issue of authority related to that matter had to be addressed, and once upheld, it resulted in the case being moved from the unopposed roll to the opposed roll. This order did not resolve the issues in the main application.

¹ Act 10 of 2013.

[6] It is essential to determine whether the order granted by this court is appealable. The Supreme Court of Appeal in *Zweni v Minister of Law and Order*² laid down the requirements for appealability of an order as follows:

- ‘(a) the decision must be final in effect and not open to alteration by the court of first instance;
- (b) it must be definitive of the rights of the parties;
- (c) and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.’

[7] In *Government of the Republic of South Africa and Others v Von Abo*³ the Supreme Court of Appeal held that:

‘It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the rights of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice.’

[8] The Constitutional Court in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*⁴ explained that:

‘In deciding whether an order is appealable, not only the form of the order must be considered but also, and predominantly, its effect. Thus, an order which appears in form to be purely interlocutory will be appealable if its effect is such that it is final and definitive of any issue or portion thereof in the main action. By the same token, an order which might appear, according to its form, to be finally definitive in the above sense may, nevertheless, be purely interlocutory in effect.’

[9] The order issued in this case was that the application for review be removed from the unopposed roll and added to the opposed roll. This is not a final

² 1993 (1) SA 523 (A); [1993] 1 All SA 365 (AD) at 532J – 533.

³ [2011] 3 All SA 261 (SCA); [2011] ZASCA 65 at para 17.

⁴ [2022] ZACC 34; 2023 (1) SA 353 (CC) at para 41.

order and, as such, is not subject to appeal as mentioned above. The application for leave to appeal should be dismissed.

[10] The application for leave to appeal was not opposed, and there should be no order as to costs.

[11] Consequently, the following order is made:

Order

1. Application for leave to appeal is dismissed.
2. There is no order as to costs.

J. T. Djaje
Acting Judge of the Labour Court