



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR114/23

In the matter between:

LYMON SIBUSISO VILAKAZI

Applicant

and

AVRAGYSTIX (PTY) LTD

First Respondent

KHULULEKANI HOPEWELL XAMESI

Second Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION (CCMA)**

Third Respondent

Decided: In chambers

Delivered: 29 October 2025

JUDGMENT: LEAVE TO APPEAL

ERASMUS, AJ

Introduction

- [1] This is an application for leave to appeal against the judgment and order of this Court handed down on 1 August 2025 in terms of which the Court dismissed the Applicant's application for review.
- [2] The Applicant brought his application under the Court's old rules¹, more particularly Rule 30(2) read with item 15 of the Practice Manual². Despite referencing item 15 of the Practice Manual, the Applicant did not file submissions in accordance therewith. Neither did the Respondent. No submissions were filed by either party in accordance with the new Court rules either.³
- [3] The application for leave to appeal was decided in chambers as per the Court's rules.

Test for leave to appeal

- [4] It is trite that leave to appeal is not simply for the taking.
- [5] Section 17 of the Superior Courts Act⁴ regulates instances in which leave to appeal may be granted, and Section 17(1) provides that leave to appeal may only be given where the judge concerned is 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;
 - (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

² Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

³ Rule 67(5) of the new Rules requires submissions to be filed within 10 days of filing the application for leave to appeal.

⁴ Act 10 of 2013.

- (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] In *Seatlholo & others v Chemical Energy Paper Printing Wood & Allied Workers Union & others*⁵ van Niekerk J (as he then was) stated that:

‘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 & others v Crocodile Valley Citrus Co (Pty) Ltd & 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 & another* (C 536/15, 6 November 2015).’

[7] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha and Another*⁶ stated that:

‘[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

⁵ (2016) 37 ILJ 1485 (LC); [2016] ZALCJHB 72 at para 3.

⁶ (1221/2015) [2016] ZASCA 176 (25 November 2016).

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.'

Merits of the application

- [8] Due to the Applicant's lack of compliance with the requirements relating to the filing of written submissions, his application stands to be dismissed on this ground alone. The Court will nonetheless also have regard to the merits of the application for leave to appeal.
- [9] In his application, the Applicant has either raised new grounds for review which were not raised in his affidavits in support of his review application previously, or repeated the same allegations as contained in his application for review, expressing his disbelief that the Court did not side with his version or submissions made.
- [10] The Applicant also continued with his submissions regarding not being guilty of the misconduct he was charged with and ultimately dismissed for, despite it being common cause that the matter that had been referred to arbitration was an unfair labour practice dispute, more specifically, an unfair suspension dispute. He was informed by the Second Respondent during the arbitration proceedings that a separate unfair dismissal dispute could be initiated should he wish to challenge the reasons for his dismissal, but the Applicant declined the opportunity.
- [11] The Applicant expressed his view that this Court's judgment wherein his suspension was found to be precautionary was "sad and uncalled for" and that this Court tried to "validate" the finding as being precautionary in circumstances where the employer did not call the suspension a

precautionary suspension. The reasons for finding that the suspension was precautionary pending the outcome of the disciplinary inquiry and that it did not constitute an unfair labour practice are set out in the judgment handed down on 1 August 2025 and need not be repeated herein.

[12] As a general assertion, the Applicant has stated that the Court's finding that the Commissioner's award stands as an award which falls without the bounds of reasonableness tramples on his constitutional rights. The Applicant's constitutional rights have been given effect to in the labour legislation, for example, the Labour Relations Act (LRA).⁷ His matter was arbitrated in terms of the LRA, and his review application was considered in terms of the LRA. This point is similarly without merit.

[13] As a result, the following order is made:

Order

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

L. Erasmus

Acting Judge of the Labour Court of South Africa

⁷ Act 66 of 1995, as amended.