

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1825/2022

In the matter between:

THOKOZILE NTULI

Applicant

and

**GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

First Respondent

COMMISSIONER MOHAU NTAOPANE

Second Respondent

**DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Third Respondent

Decided: In Chambers

Delivered: 31 October 2025

JUDGMENT – LEAVE TO APPEAL

PHAKEDI, AJ

Introduction

- [1] This is an unopposed application for leave to appeal against the whole judgment granted by this Court on 25 April 2025. The Applicant did not file her submissions as envisaged in rule 67 (5) of the Rules Regulating the Conduct of the Proceedings of the Labour Court (the rules).

- [2] This court does not intend to deal with each of the grounds of appeal raised by the applicant and this should not be construed to mean that such grounds were not considered. The applicant alleges that the Court erred in finding that she failed to give an adequate explanation for the delay in referring the dispute to the Bargaining Council and such a finding constitutes a misdirection on the facts and the law. Furthermore, the applicant is aggrieved that the decision of the court does not dispose of all the issues in this case and there are reasonable prospects that another court might come to a different conclusion.
- [3] Despite the applicant's failure to file submissions, the Court deems it prudent and in the interests of speedy resolution of disputes to determine this matter on the notice of application filed by the applicant.

Applicable test for leave to appeal

- [4] The application is governed by section 17(1) of the Superior Courts Act¹ which provides:

'17 Leave to appeal

- (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,
 - (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a), and
 - (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.'

¹ Act. 10 of 2013.

- [5] The above-mentioned section also applies to applications for leave to appeal filed in the Labour Court as envisaged in section 151 (2) of the Labour Relations Act² (LRA).
- [6] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and another*³ the Supreme Court of Appeal said the following
- [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 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.'
- [7] The Labour Appeal Court (LAC) in *Martin and East (Pty) Ltd v National Union of Mineworkers and others*⁴ emphasised that this court ought to be cautious when leave to appeal is granted, as should the LAC when petitions are granted taking into account that the LRA was designed to ensure an expeditious resolution of labour disputes. The statutory imperative 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.

Analysis

² Act 66 of 1995, as amended. This section provides that '*the Labour Court is a superior court that has authority inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a Division of the High Court of South Africa has in relation to the matters under its jurisdiction.*'

³ (1221/2015) [2016] ZASCA 176 (25 November 2016).

⁴ (2014) 35 ILJ 2399 (LAC) at p 16.

[8] It is trite that in granting condonation, the Court exercises a discretion. The Labour Appeal Court may only interfere with the exercise of this discretion if it is found that in exercising its discretionary powers, the Court acted capriciously, upon wrong principles, in a biased manner, for insubstantial reasons, or committed a misdirection, or an irregularity or exercised its discretion improperly or unfairly.⁵

[9] The application came before this Court as a review of the jurisdictional ruling wherein the Commissioner had dismissed her application for condonation. In her referral form, the applicant had alleged that the dispute arose on 14 April 2010 but she only referred her dispute to the Council on 25 March 2022 unaccompanied by a condonation application. In her condonation application, she failed to account for the period between 2010 and 2016 as she only provided an explanation from 12 January 2017 when she first lodged a grievance.

[10] In *Fairtrade Tobacco Association v President of the Republic of South Africa*⁶ likewise the Court held that:

“As such, in considering the application for leave to appeal, it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on facts and law.”

[11] After careful consideration of the grounds for leave to appeal submitted by the applicant in this matter, this Court is not persuaded that the application for leave to appeal should be granted.

[12] Accordingly, the following order is made:

Order

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

⁵ See: *Coates Brothers Ltd v Shanker and Others* (2003) 24 ILJ 2284 (LAC) at para 5.

⁶ 2020 JDR 1435 (GP) at para 6.

GC Phakedi

Acting Judge of the Labour Court of South Africa

LABOUR COURT