



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2666/22

In the matter between:

LUCKY PHILLIP NGOBENI

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

COMMISSIONER STEPHENS SHEMA MOLAPO N.O.

Third Respondent

Decided: In Chambers

Delivered: 29 October 2025

(This judgment was handed down electronically by emailing a copy to the parties. The 29th of October 2025 is deemed to be the date of delivery of this judgment).

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 03 September 2025. The Applicant filed his 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 is aggrieved that the Court did not consider material evidence before it, did not dispose of the issue of the appropriateness of the sanction meted out against the applicant, and the judgment leads to confusion regarding principles applicable when determining good cause to be shown by applicants in condonation applications.
- [3] The first respondent despite being properly served with the application did not file opposing papers.

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

¹ 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.'

[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

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.

reasonable prospect that the factual matrix could receive a different treatment, or where there is some legitimate dispute on the law.

Analysis

- [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 applicant submits that the court erred in concluding that the Applicant's explanation is not satisfactory because he failed to explain why he could not employ alternative means to secure funds to prosecute his review application. It is also submitted that the applicant was under the impression that his trade union had filed the review application. According to the evidence presented by the Applicant in support of his condonation application, there was no undertaking that the trade union would launch the review application. Mr Mbodi, who represented the Applicant, indicated on email that he could not find any errors in the arbitration award.
- [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

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.

leave to appeal should be granted in order for the LAC to consider whether the discretion to refuse condonation in this matter was exercised properly.

[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.

G. C. Phakedi

Acting Judge of the Labour Court of South Africa