



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J 1394/22

In the matter between:

THATO SIMON KHABU

Applicant

and

STONE AND ALLIED INDUSTRIES (PTY) LTD

Respondent

Heard: In Chambers

Delivered: 08 December 2025

Summary: Leave to appeal is granted by virtue of substantial point of law.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

DIKOTLA, AJ

Introduction

[1] On 02 February 2024, this Honourable Court handed down its judgment in which the applicant's claim was dismissed, and whereas he seeks leave to appeal to Labour Appeal Court (LAC) against same.

- [2] Since this judgment against which leave to appeal is sought is detailed, I therefore do not intend to rehash my reasoning and findings thereof.
- [3] In summation, the gist of the dispute between the parties concerned whether the applicant's claim is prescribed or not.

Principles to Leave of Appeal

- [4] Learning from the wisdom of the Superior Court's statutory framework, the ultimate test applicable for leave to appeal is drawn in section 17(1)(a) of the Superior Courts Act 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."

- [5] In **MEC for Health, Eastern Cape v Mkhita**¹, the Supreme Court of Appeal emphasized the correct considerations in granting leave to appeal, as follows:

"[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."

- [6] The Supreme Court of Appeal set out the application for a test to grant leave to appeal in **Cook v Morrisson and Another**² as follows:

"[8] The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law;

¹ 2016 JDR 2214 (SCA)

² 2019 (5) SA 51 (SCA)

or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list (Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd 1986 (2) SA 555 (A) at 564H – 565E; Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi 2017 (2) SACR 384 (SCA) ([2017] ZASCA 85) para 21)."

Conclusion

[7] In my view the reasonable prospects of success are insufficient, however the case as alluded raises a substantial point of law bordering along the essential development and application of breach of contract as cause of action and possible defence of prescription as universally acceptable in civil cases which is *sui generis* right and of greater importance to the public.

[8] It is against the above substantial position, that leave to appeal shall succeed.

Costs

[9] Since this application concerns important questions of law pertaining to development and application of civil law in an exclusive area of labour law, it is considered as a matter of public interest, therefore costs shall be determined in the same context.

[10] In exercising its judicial discretion, the Constitutional Court in *Long v South African Breweries (Pty) Ltd and Others*³, reaffirmed the principle set in *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁴, with regard to costs in employment disputes and stated that "*when making an adverse costs order in a labour matter, a presiding officer is required to consider the principle of fairness and have due regard to the conduct of the parties*".

[11] In the premises, I make the following order:

Order

1. Leave to appeal is granted.
2. No order to costs.

³ [2019] ZACC 7; (2019) 40 ILJ 965 (CC) at para 30.

⁴ [2018] ZACC 1; (2018) 39 ILJ 523 (CC) at para 25.

B. J. Dikotla

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. A. J Nel

Instructed by: Goldberg Attorneys

For the Respondents: Adv. M.J Van As

Instructed by: Schoeman Steyn Attorneys Inc.