



(1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised

TDM _____ 16 January 2026
Signature _____ Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2025-122304

In the matter between:

GAUTENG DEPARTMENT OF INFRASTRUCTURE

DEVELOPMENT

First Applicant

GAUTENG DEPARTMENT OF HEALTH

Second Applicant

and

PUBLIC HEALTH AND SOCIAL DEVELOPMENT

SECTORAL BARGAINING COUNCIL

First Respondent

PSA obo GOODHOPE MASEKO

Second Respondent

MOKHELE RASEBOKA

Third Respondent

RICHARD MAKHUMISANI

Fourth Respondent

TREVOR TABANE

Fifth Respondent

ADVOCATE RONNIE BRACKS N.O.

Sixth Respondent

Considered: In Chambers

Delivered: 16 January 2026

JUDGMENT

PHAKEDI, AJ

Introduction

- [1] This is an unopposed application for leave to appeal against the whole judgment granted by this Court on 4 August 2025. The Applicants filed their submissions as envisaged in Rule 67 (5) of the Rules Regulating the Conduct of the Proceedings of the Labour Court.
- [2] The application for leave to appeal was filed on time and within the prescribed timeframes. However, the matter was only brought to the attention of this Court on Monday, 12 January 2026.
- [3] This court does not intend to deal with each of the grounds of appeal raised by the applicants and this should not be construed to mean that such grounds were not considered. Amongst other grounds, the Applicants submit that this Court erred in finding that the Labour Court does not have jurisdiction to deal with a dispute relating to interpretation or application of the collective agreement.
- [4] The second respondent despite being properly served did not oppose this application.

Applicable test for leave to appeal

- [5] 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 -

¹ Act. 10 of 2013.

- (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.'

[6] 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).

[7] 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.'

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).

- [8] 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

- [9] It is trite that in order for the applicant to succeed with its application for an interim interdict, the Court must be persuaded that the applicant has a *prima facie* right and if the right is not protected, the applicant will suffer irreparable harm. This position was espoused by the Constitutional Court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*⁵ where it was held as follows:

‘under the *Setlogelo* test, the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a *prima facie* right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation *pendente lite*.’

- [10] In *Fairtrade Tobacco Association v President of the Republic of South Africa*⁶ the full 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

⁴ (2014) 35 ILJ 2399 (LAC) at p 16.

⁵ 2012 (6) SA 223 (CC) at para 50.

⁶ (21688/2020) [2020] ZAGPPHC 311 (24 July 2020) at para 6.

possibility that another court, the SCA in this instance, will, not might, find differently on both facts and law.”

[11] After careful consideration of the grounds for leave to appeal submitted by the applicants in this matter, this Court is persuaded that the application for leave to appeal should succeed.

[12] Accordingly, the following order is made:

Order

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

G. C. Phakedi

Acting Judge of the Labour Court of South Africa