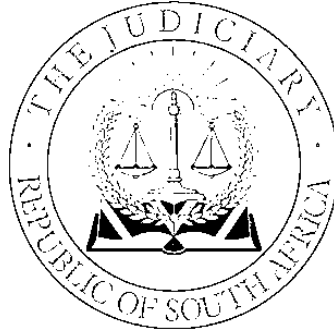




THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE Number: 2025 – 212698

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| (1) | REPORTABLE: YES /NO |
| (2) | OF INTEREST TO OTHER JUDGES:
YES /NO |
| (3) | REVISED: YES/ NO |

5 February 2026

In the matter between:-

THEBOGO VINCENT MODIKA

Applicant

and

INDUSTRIAL DEVELOPMENT CORPORATION

OF SOUTH AFRICA

First Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

NATIONAL UNION OF METALWORKERS OF

Decided: In Chambers

Delivered: 5 February 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading onto CaseLines. The date and time for hand-down is deemed to be 5 February 2025

Summary: Leave to appeal – proper grounds made out – application for leave to appeal granted

JUDGMENT – LEAVE TO APPEAL

SNYMAN, AJ

Introduction

- [1] In this instance, the applicant brought an urgent application to interdict the first respondent from continuing with an internal disciplinary hearing against him. The applicant alleged that this disciplinary hearing constitutes an occupational detriment against him, based on a protected disclosure he had made on 29 July 2025, and he relied on section 188A(11) of the Labour Relations Act (LRA)¹. The applicant sought final relief.
- [2] The matter was argued before me on 12 November 2025, and I handed down judgment on 13 November 2025. I granted the application and afforded the applicant the interdictory relief he sought, subject to certain conditions, which was contained in the order at the conclusion of the judgment.
- [3] The first respondent was dissatisfied with the order and judgment against it. An application for leave to appeal was filed on 17 November 2025. It also filed written submissions in support of its application for leave to appeal on 30 November 2025. The applicant, as at the date of considering the application for leave to appeal, had not filed his own written submissions, with the time limit for doing so now having expired. The leave to appeal application is thus now ripe for determination.

¹ Act 66 of 1995 (as amended).

- [4] Rule 67(6) of the Labour Court Rules provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason to direct otherwise and will therefore determine the first respondent's leave to appeal application in chambers.

Analysis

- [5] Leave to appeal is not there for the asking. In terms of section 17(1)(a) of the Superior Courts Act², leave to appeal may only be given where Judge considers that the appeal would have a reasonable prospect of success, there is some other compelling reason why the appeal should be heard, including the existence of conflicting judgments.
- [6] Thus, for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another Court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal.³
- [7] As to the meaning of '*reasonable prospects of success*', this was considered in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*⁴ where the Court said:

'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.

² Act 10 of 2013.

³ See *J & L Lining (Pty) Ltd v National Union of Metalworkers of SA and Others (2)* (2019) 40 ILJ 1303 (LC) at para 5.

⁴ [2016] JOL 36940 (SCA) at paras 16 – 17. See also *Ramakatsa and Others v African National Congress and another* [2021] JOL 49993 (SCA) at para 10, where it was held: '*The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist ...*'.

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.'

- [8] I have considered the first respondent's application for leave to appeal with due regard to the aforesaid principles. I am persuaded that there exist reasonable prospects that another Court may come to a different conclusion with regard to certain factual findings I had made.
- [9] Further, I believe that the issue of section 188A(11) and its consequences to pending disciplinary proceedings, as well as on what basis should this Court interfere *in medias res* in such instances, is deserving of the attention of the Labour Appeal Court. This is especially the case where it comes to what exactly must be considered, and to what extent the Court must be satisfied that a protected disclosure exists. The first respondent has also pointed to conflicting judgments on this issue.
- [10] I thus conclude that the first respondent has managed to show that there exists a reasonable prospect that another Court would come to a different conclusion, and in my view the first respondent has reasonable prospect of success on appeal. But especially, I consider there to exist a pertinent question of law that requires determination by an Appeal Court. The application for leave to appeal thus falls to be granted.
- [11] This only leaves the issue of costs in this application for leave to appeal, which I believe should be costs in the appeal.
- [12] In the premises the following order is made:

Order

1. The first respondent's application for leave to appeal is granted.

2. The first respondent is given leave to appeal to the Labour Appeal Court against my judgment of 13 November 2025.
3. Costs are to be costs in the appeal.

S. Snyman

Acting Judge of the Labour Court of South Africa