



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JS 207/19

JAN WALTERS KRUGER

PLAINTIFF

and

UNIVERSITY OF SOUTH AFRICA

DEFENDANT

Decided: In Chambers

Judgment: 24 February 2026

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 24 February 2026.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J

- [1] The Plaintiff applied for leave to appeal against the whole judgment and order, delivered on 20 June 2025.
- [2] The Applicant raised numerous grounds for leave to appeal and filed submissions in support of its grounds for appeal.
- [3] I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof. Both parties filed comprehensive

submissions, which I have taken time to peruse and consider and I do not intend to repeat those herein.

The test for leave to appeal

- [4] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act¹ (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.²
- [5] Section 17(1) of the Superior Courts Act³ provides that leave to appeal may only be granted if the appeal has a reasonable prospect of success or if there is some other a compelling reason why the appeal should be heard. The Superior Courts Act has raised the threshold for granting leave to appeal.
- [6] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion. The test indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.
- [7] It is further trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

¹ Act 66 of 1995, as amended.

² See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

³ Act 10 of 2013.

- [8] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,⁴ this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

‘The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes 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 (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015).’

- [9] In deciding this application for leave to appeal, I am also guided by the *dicta* of the Supreme Court of Appeal (SCA) where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*⁵ that:

‘...The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.’

This application

- [10] I have considered the submissions made in support and in opposition of the grounds for appeal and applying the applicable test, I am not convinced that the Plaintiff has made out a case for leave to appeal to be granted.
- [11] Considering the grounds for leave to appeal and the submissions filed by the Plaintiff, it is evident that the application does not meet the high threshold for leave to appeal to be granted as the application is rather a record of the

⁴ (2016) 37 ILJ 1485 (LC) at para 3.

⁵ 2013 (6) SA 520 (SCA) at para 24.

Plaintiff's dissatisfaction with the outcome and a re-argument of the issues already ventilated and decided upon during the trial.

- [12] The purpose of an appeal to the LAC is not to provide an applicant with an avenue for re-argument or an opportunity to re-open what has already been finally adjudicated. An appeal is limited to matters where there is a reasonable prospect that another court would find differently.
- [13] This matter concerns the application of established and trite principles governing the position regarding retirement and a claim for discrimination based on age. There is no novel issue, nothing unique or any legitimate dispute about the applicable legal principles involved. In short: there is no legitimate dispute on the law and the Plaintiff is unable to cross this hurdle.
- [14] There is also not a reasonable prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion.
- [15] There is no merit in any of the grounds for leave to appeal. I will refer to some of the grounds for leave to appeal to illustrate that there is no prospect of success. The Plaintiff submitted that 'this Court erred in not coming to the conclusion that giving the employer the right to dismiss the employee anytime after reaching the agreed or normal retirement age is incompatible with section 9(1), 9(3) and 23 of the Constitution pertaining to a right to fair labour practices and the spirit, purport and objects of the Bill of Rights and the LRA itself.' The Plaintiff's pleaded case did not raise the issue that section 187(2)(b) of the LRA was incompatible with sections 9 and 23 of the Constitution – the constitutional point was not pleaded, and it was not an issue for this Court to decide. It cannot be decided on appeal.
- [16] The Plaintiff raised as a ground for leave to appeal that 'the court should have found that the employer's conduct in retiring the employee the following year in January 2019 was contrary to section 2(a) to (d) of the Older Persons Act 13 of 2006.'

[17] There are two difficulties with this ground for leave to appeal. First, it is factually incorrect. The facts were that on 11 January 2019 the Plaintiff received a letter, confirming that the employment relationship had terminated on 31 December 2018. It was common cause that the Plaintiff's contract of employment terminated at the end of the year in which he had turned 65 (which was 2018) and that this was done in accordance with the Defendant's policy. The Plaintiff was not retired 'the following year in January 2019' and this Court made no such finding. The letter issued in January 2019 merely confirmed that the Plaintiff's employment had terminated on 31 December 2018. The said letter did nothing more than to clarify the Plaintiff's status and it certainly did not constitute a termination or changed the date of termination.

[18] Second, the Plaintiff did not plead a contravention of the Older Persons Act, nor did he adduce any evidence on this during trial. The Plaintiff's case was pleaded and pursued in terms of the provisions of the LRA and it is not permissible to introduce an entirely new cause of action on appeal.

[19] The delay in handing down this judgment on account of medical incapacity is regretted.

[20] In the premises I make the following order:

Order

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

Connie Prinsloo

Judge of the Labour Court of South Africa