



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS922 /2020

In the matter between:

DANIEL JACOBUS COTZEE

Applicant

and

ABSA BANK LIMITED

Respondent

Heard: In Chambers

Delivered: 24 February 2026

JUDGMENT - APPLICATION FOR LEAVE TO APPEAL

MAHALELO, AJ

Introduction

[1] This is an application for leave to appeal against the whole of this court's judgment and order delivered on 30 December 2025, in which the court found that the dismissal of the applicant by the respondent for operational reasons was unfair and ordered reinstatement.

[2] For convenience, the parties are referred to as in the main judgment. The application for leave to appeal is opposed by the applicant.

- [3] Several grounds of appeal were raised in support of this application. It is unnecessary to list them in this judgment. Suffice to mention that the applicant submitted that those grounds are meritless and should be rejected by the court.

Test for Leave to Appeal

- [4] Section 17(1) of the Superior Court Act¹ deals with the relief of leave to appeal. In terms thereof, leave to appeal may only be granted (a) where a judge/s are of the opinion that (a) the appeal “*would*” not “*may*”, have reasonable prospects of success (b) there are some compelling reasons why the appeal should be heard, including the existence of conflicting judgments on the matter under consideration.
- [5] It has been confirmed that the use of the words “*only*” and “*would*” implies that the threshold is set too high to a point where this Court must only give leave in instances where a definitive prospect exist that the appeal would succeed.
- [6] The court in *Mgedezi Gasbat Nxumalo v The National Bargaining Council for the Chemical Industry (NBCCI) and Others*² conveniently summarised the approach to an application for leave to appeal 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 section 17(1)(a)(i) are 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

¹ Act 10 of 2013.

² (JR 1170/2023) [2016] ZALCJHB 212 (15 June 2016) Unreported.

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 (LCA), 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* (C536/15, 6 November 2015)).'

Conclusion

[7] I have had regard to the test for leave to appeal and the submissions in terms of rule 67(5) by the parties. I concluded that there are reasonable prospects on appeal.

[8] In the circumstances, leave to appeal succeeds.

Order

1. Application for leave to appeal is granted.
2. Costs in the appeal.

MB Mahalelo

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adv. G. L. Van Der Westhuizen, instructed by: Louw Erasmus Incorporated

For the Respondent: J. Norval of Edward Nathan Sonnenbergs Incorporated