



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

05-03-2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: J930/24

In the matter between:

SEELAN PILLAY

Appellant

and

DISCOVERY CONNECT DISTRIBUTION

SERVICES

First Respondent

TEBOGO GOODMAN

Second Respondent

APHELELE TAPILE

Third

Respondent

In re:

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Applicant

NTJATJA KLASS APHANE

Second Applicant

and

DISCOVERY CONNECT DISTRIBUTION

SERVICES

First Respondent

TEBOGO GOODMAN

Second Respondent

APHELELE TAPILE

Third

Respondent

Considered: In Chambers

Delivered: 05 March 2026

JUDGMENT

MAFA-CHALI, AJ

Introduction:

- [1] On 03 July 2025, this Court handed down judgment in terms of which the contempt ruling issued by the first applicant was set aside and the first applicant ordered to set down the constructive dismissal dispute for arbitration proceedings.
- [2] Mr Seelan Pillay has now made an application for leave to appeal the judgment. Mr Pillay was not a party to the court proceedings as the applicant was the Commission for Conciliation, Mediation and Arbitration (the CCMA) and the contempt ruling was issued by the CCMA Commissioner in the constructive dismissal dispute referred to the CCMA by Mr Pillay. The issue of Mr Pillay's locus *standi* shall be dealt with hereunder.
- [3] There is no opposition by the respondents on the application for leave to appeal.
- [4] The application for leave to appeal was lodged on 23 July 2025, and further submissions to the application were filed on 05 August 2025. The application is in compliance with Rule 67 (2) and (5) of the Rules Regulating the Conduct

of the Proceedings of the Labour Court¹ as it was filed within the 15 days prescribed time limits from the date of the judgement.

Locus standi

- [5] Mr Pillay submitted that he has not been cited as the party in the matter and has lodged the appeal as an affected party who has a direct and substantial interest to the proceedings and the decision of this Court and which has impacted his rights significantly as an employee in the CCMA matter.
- [6] Mr Pillay further submitted that the decision not to cite him as a party to the proceedings was a legislative requirement in that the first and second respondents were duty bound in accordance with the provisions of the Labour Relations Act² (LRA) to lodge the application to refer the contempt ruling to this Court, and in the application they both failed to submit the record of the proceedings, the fact he has no control over.
- [7] In the interests of justice, the Court will entertain this application brought by Mr Pillay as an interested and affected party to the matter, and proceed to deal with the test for leave to appeal.

The test for leave to appeal

- [8] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. Section 166(1) of the LRA 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 judgement or final order of the Labour Court. To be entitled to leave to appeal, an applicant must satisfy this Court that there is a reasonable prospect that another Court would come to a different conclusion³.
- [9] 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.

¹ GN 4775 of May 2024. Effective 17 July 2024.

² Act 66 of 1995, as amended.

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

[10] When considering the standard in applications for leave to appeal, section 17(1) of the Superior Courts Act⁴ is the starting point in considering applications of this nature. It specifically provides that:

‘17 (1) leave to appeal may only be given where a 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 underconsideration;
- (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.’

[11] Central to the determination of applications for leave to appeal is whether there are reasonable prospects of success in the appeal. This test as outlined in section 17 (1) of the Superior Court Act differs to the traditional test as previously stated by our courts and it raises the threshold of the test for leave to appeal.

[12] The threshold to cross for an audience with an appeal court is a high one, requiring a strong reasonable prospect that another court would come to a different decision, or that there are compelling reasons justifying the attention of that court.

[13] In *Seathlolo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*⁵, Judge Van Niekerk, discussing the test to be applied states:

⁴ Act 10 of 2013

⁵ (2016) 37 ILJ 1485 (LC)

“The traditional formulation of the test that is applicable 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...the use of the word “would” in s 17(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...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...The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which that there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law...”

[14] In deciding this application for leave to appeal, I am also guided by the dicta of the Supreme Court of Appeal where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*⁶ 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”.

[15] In *Smith v S*⁷, the test was summarised as follows:

“What the test of reasonable prospects of success postulates is 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 order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal”.

⁶ 2013 (6) SA 520 (SCA) at para 24.

⁷ 2012 (1) SACR 567 (SCA).

- [16] An applicant in an application for leave to appeal must therefore convince the court *a quo* that it has reasonable prospects of success on appeal. What the test requires is the reasonable likelihood that another court, presented with the same facts and evidence as this Court, could come to a different conclusion than the one arrived at by this Court.
- [17] Reasonable prospects of success mean that the applicant has to show that another Court, faced with the same material, could come to a different conclusion, or an appeal can succeed if there is a legitimate dispute of the law.
- [18] This Court and the LAC have in the past stressed that leave to appeal should not be lightly granted because meritless appeals delay the final resolution of disputes.
- [19] The submissions made by the applicant are that he has a high chance of success as he would wish to introduce new evidence into this appeal, which is the record of the CCMA proceedings and the documentary evidence submitted before the Commissioner at the contempt application, and such evidence would show that the Respondent committed contempt of the CCMA proceedings. The CCMA failed to submit these records before the Court and the applicant finds this omission irregular.
- [20] The applicant further submitted that the Court committed an error of law finding that there was no contempt application made before the Commissioner at the CCMA and that it was not clear how the Commissioner dealt with the matter to ultimately issue the contempt ruling.
- [21] The applicant lastly raised the issue of conflict of interest and submitted that the Judge should not have presided over this matter as she had a relationship with the CCMA as either a part time commissioner of the CCMA or the CCMA was her previous employer and the relationship was not disclosed.
- [22] It is clear that the applicant intends the Labour Appeal Court to conduct a rehearing of the matter already heard by this Court and introduce the record of the CCMA proceedings as the CCMA failed to present it to the Court. The

Applicant failed to show how the Court made an error in applying the law or in interpreting the provisions of the LRA when it adjudicated on the matter.

- [23] Ordinarily an Appeal Court will not receive new evidence which was not before the lower court unless in exceptional circumstances and it will require special permission from the Court unless it is highly relevant, credible and could not have been produced earlier with reasonable diligence. In this matter the applicant has not shown such exceptional circumstances. It was just a matter of the CCMA having failed to file the record of the CCMA contempt proceedings without tangible and valid reasons given for such failure.
- [24] The submissions regarding the conflict of interest are baseless as the outcome of the judgment was against the CCMA as the application for contempt brought by the CCMA was dismissed.
- [25] Having had regard to the submissions made on behalf of the Applicant in respect of this application, they do not come close to meeting the threshold referred to above.
- [26] *In casu*, applying the principles applicable to applications for leave to appeal, I am not persuaded that there are reasonable prospects that the LAC would arrive at a different conclusion than the one arrived at by this Court. The Applicant failed to make out a case for leave to appeal to be granted.
- [27] In light of the above, and having had regard to the submissions made in regard to the application for leave to appeal, and further upon a reflection of my judgment, I am of the view that the Applicant has failed to demonstrate that there are reasonable prospects that the LAC will come to a different decision to that reached in my judgment.
- [28] I am not persuaded that any appeal would have a reasonable prospect of success. Furthermore, there are no other compelling reasons why leave to appeal should be granted.
- [29] There is no reason why a cost order should be made in this application.
- [30] In the premises, the following order is made:

Order

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

G. Mafa-Chali

Acting Judge of the Labour Court of South Africa