



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2025-205156

In the matter between:-

PORTIA HALIO TSHABALALA

Applicant

and

ADVOCATE HARRIET MUTENGA N.O.

First Respondent

MOQHAKA LOCAL MUNICIPALITY

Second Respondent

Decided: In Chambers

Delivered: 5 March 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 March 2026

Summary: Leave to appeal – no proper grounds made out – application for leave to appeal dismissed

JUDGMENT – LEAVE TO APPEAL

SNYMAN, AJ

Introduction

- [1] In this instance, the applicant had brought an urgent application seeking to interdict the disciplinary proceedings against her from continuing, pending an application brought by her to review certain conduct / decisions of the chairperson of her disciplinary hearing. The applicant brought the application under sections 157, 158(1)(a) and 158(1)(h) of the Labour Relations Act (LRA)¹. The application came before me for argument 23 January 2026. In an order granted the same day, the applicant's application was dismissed with attorney and client costs. Written reasons (in the form of a written judgment) was handed down in respect of this order on 30 January 2026.
- [2] The applicant was dissatisfied with the order and judgment against her. An application for leave to appeal was filed on the same date, being 23 January 2026, before the reasons for my order were even provided. This application for leave to appeal only raised only two grounds for leave to appeal, namely a general and unmotivated contention that I had failed to follow earlier decisions on the same issue, and that I erred in granting a punitive costs award against the applicant. This application for leave to appeal was then supplemented on 10 February 2026, where a number of further grounds for leave to appeal were raised. The applicant further filed written submissions in support of her application for leave to appeal on 18 February 2026. Considering this is an application for leave to appeal that must be dealt with as a matter of expediency, I was not favoured with any written submissions opposing leave to appeal from the first and second respondents by the time the time limit in Rule 67(5) had expired. I consider the leave to appeal application to be ripe for determination and will proceed accordingly.
- [3] 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 applicant's leave to appeal application in chambers.

Analysis

¹ Act 66 of 1995 (as amended).

[4] Leave to appeal is not there for the asking. This is evident from section 17(1)(a) of the Superior Courts Act², which provides that: ‘(a) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that: (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 a matter under consideration.*’

[5] In *J & L Lining (Pty) Ltd v National Union of Metalworkers of SA and Others* (2)³ the Court summarized the legal position that applies when a litigant seeks leave to appeal from this Court, as follows:

‘Leave to appeal is not there for the asking. When deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another court would come to a different conclusion to that of the court a quo, or in other words, whether the appeal would have a reasonable prospect of success. This was summarised in *SA Clothing & Textile Workers Union & others v Stephead Military Headwear CC*, as follows:

‘It is trite that 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.’

[6] As to the meaning of ‘*reasonable prospects of success*’, the Court in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*⁴ said:

² Act 10 of 2013.

³ (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 ...*’.

‘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.

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.’

- [7] Next, and as to what would constitute a compelling reason for another Court to entertain the appeal, the *Court in Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁵ had the following to say:

‘... A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. ...’

- [8] In this instance, the applicant has done very little in adding anything to the arguments already presented to me on 23 January 2026. The applicant continues to rehash all the same arguments, and just as was the case when the matter was argued, it remains a completely unmeritorious case. The applicant simply seeks to camouflage the same arguments with a plethora of references to authorities, none of which is of much assistance or relevance in this matter. Honestly, this matter is not overly complex, and to try and make it so for the purposes of leave to appeal is not on. This is especially true on the issue of jurisdiction. Other than a bald and unfounded assertion that there exist conflicting judgments on jurisdiction, the applicant has in reality advanced nothing that would convince me that there exist any prospects that another Court would come to a different conclusion in this respect. This is especially so, considering the clear approach now adopted by the Labour Appeal Court

⁵ 2020 (5) SA 35 (SCA) at para 2. See also *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* 2013 (3) SA 315 (SCA) at para 5; *Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others* 2016 (3) SA 317 (SCA) at para 23; *Tshwane City and Others v Nambiti Technologies (Pty) Ltd* 2016 (2) SA 494 (SCA) at para 6.

in *Cibane and Another v Premier of Province of Kwazulu-Natal*⁶. To continue to cling to older authorities prior to judgments like *Steenkamp and Others v Edcon Ltd (National Union of Metalworkers of SA intervening)*⁷ and *Cibane* is of no assistance to the applicant. There exist no prospects of success on appeal in respect of the issue of jurisdiction.

- [9] In the application for leave to appeal, the applicant attempts to slip in that her case is founded on contract. This is entirely impermissible. The applicant cannot raise a new case on appeal. I was at pains to identify exactly what her case was, as she had specifically pleaded in her founding affidavit. She never relied on contract or on section 77(3) of the BCEA as a basis for this Court having jurisdiction. This kind of case must be pertinently pleaded and never was. As clearly said in *Shezi v SA Police Service and Others*⁸: ‘... an applicant invoking s 77(3) must necessarily plead a case in contract. The applicant’s pleaded case is not one that invokes any term of her employment contract, or that alleges a breach of contract on the part of her employer ...’. The applicant is essentially grasping at straws, after the fact, to attempt to overcome her undeniable jurisdictional difficulties. I can simply see no reasonable prospect that another Court would decide otherwise, on appeal, in this respect.
- [10] On the issue of authority, the applicant contends that I erred in relying on *Monareng v DR J S Moroka Municipality*⁹, which was overturned on appeal in *Monareng v DR J S Moroka Local Municipality*¹⁰. I think the applicant is being opportunistic in raising this as an issue supporting leave to appeal. The applicant misconstrues my reference to the judgment of the Labour Court in *Monareng*. I was using the facts in that judgment as an example of when authority may be established by the nature of a position of a person granting authority. I never held that authority in this case existed on the basis of the *ratio* of the Labour Court in *Monareng*. If proper regard is had to what I set out in paragraph 13 of my judgment, as well as all the other preceding and subsequent paragraphs specifically dealing with the issue of authority, I made

⁶ (2025) 46 ILJ 2587 (LAC).

⁷ (2016) 37 ILJ 564 (CC) at para 106.

⁸ (2021) 42 ILJ 184 (LC) at para 12. See also *Leshabane v Minister of Human Settlements and Others* (2024) 45 ILJ 833 (LC) at para 49; *Nhlapo-Mofokeng v Emfuleni Municipality and Another* (2023) 44 ILJ 815 (LC) at para 10; *Phahlane v SA Police Service and Others* (2021) 42 ILJ 569 (LC) at para 9.

⁹ (2022) 43 ILJ 1855 (LC) at para 15.

¹⁰ (2024) 45 ILJ 2689 (LAC).

it clear that authority in principle can be established in a number of different ways, which included resolutions and powers of attorney. There are many other authorities I referred to an which I actually relied on. But what the applicant does not refer to when seeking to make a point in this respect, is that in this case, there was actually a Municipal Council resolution. The complaint by the applicant was that it was not a good enough resolution. The LAC in *Monareng* never decided on what would be a 'good enough' resolution. Instead, what it said was: '... Absent a resolution by the municipal council, the powers to oppose Mr Monageng's appeal and to appoint the attorneys reside with the municipal council ...' (emphasis added). The LAC overturned the finding of the Labour Court because there was no resolution. In this case, I was satisfied that the resolution provided did give authority to the Municipal Manager to provide the power of attorney to the first respondent's attorneys. The LAC judgment in *Monareng* cannot assist the applicant. She has no prospects of success on appeal on the authority issue.

[11] The applicant also persists with the authority challenge relating to the first respondent's appointment of Peyper attorneys. The applicant however has added nothing to what had already been argued before in this respect. The fact remains that Peyper attorneys do not seek to oppose the matter on behalf the Municipal Council (the second respondent). Peyper attorneys are opposing the matter on behalf of the first respondent in her own right and as a party, herself, to the proceedings. It does not matter in what capacity she is a party. She, personally, in her affidavit, made it clear that she authorised Peyper Attorneys to bring the answering affidavit on her behalf, and oppose the matter on basis she advances. This proves authority. No resolution from the Municipal Council is needed. This is nothing but spurious point taking. I see no reasonable prospect that another Court would come to a different conclusion.

[12] The applicant, in the application for leave to appeal, further persists with the same kind of spurious point taking where it comes my evaluation and setting out of the evidence. She contends that I was effectively not permitted to have regard to the comprehensive disciplinary finding provided by the first respondent as an integral part of her answering affidavit, because the first respondent did not in her answering affidavit specifically identify each and every portion thereof she specifically relied upon and then repeat that portion

in the answering affidavit. I consider this submission preposterous. In *Nature's Choice Products (Pty) Ltd v Food and Allied Workers Union and Others*¹¹ the Court dealt with his kind of point as follows:

'Reliance by the respondents on *Swissborough* in support of their submission that the appellant cannot simply make reference to a document and request the court to have regard to it, is misplaced. That case is clearly distinguishable. What was said in *Swissborough* was that an applicant cannot simply attach documents to its founding affidavit and require the court to establish, from somewhere within the pile of documents, averments to support the application. The court in *Swissborough* held that if a document is attached to an application, then the portion(s) of the document, which are relied upon, must be clearly identified. In this case, that situation did not pertain, instead, the relevant document, namely, the appellant's response, although not attached to the founding papers, was, nevertheless, identified in the affidavit and incorporated into that affidavit by reference.'¹²

[13] *In casu*, the comprehensive finding by the first respondent was attached to her answering affidavit. She further specifically incorporated it into her answering affidavit by referring to it. She then raised a specific defence of mootness, based on what she had found in her finding. She pertinently says: '*I have dealt with the various rulings in the outcome of the hearing, annexure "HM1". I do not wish to further belabour these proceedings by dealing with each one separately, and respectfully refer to annexure "HM1"*'. This is exactly in line with what the Court envisaged in *Nature's Choice supra*, and the finding and its contents was thus proper evidence before me. The applicant is simply being disingenuous, in raising this as a basis for seeking leave to appeal.

[14] Further, the applicant had an opportunity to answer this on reply, but never did. Instead, she bleated about the fact that she considered the conduct of producing this finding in the first place to be impermissible self-help considering the relief she was seeking in her application already brought when the finding was issued. But to make it worse, there is not much difference between what is set out in the first respondent's finding and in the applicant's founding affidavit with regard to background facts. As I explained in my

¹¹ (2014) 35 ILJ 1512 (LAC) at para 24.

¹² The Court was referring to *Swissborough Diamond Mines (Pty) Ltd & others v Government of the Republic of SA* 1999 (2) SA 279 (T)

judgment, the first respondent just did it better in her finding. In the end, Appeal Courts are most reluctant to interfere with factual findings of a Court *a quo* on appeal. Factual findings of lower Courts will only be interfered with on appeal in exceptional circumstances. That would be cases where it can be shown that it lacked cogency, or was misdirected, or materially in error considering what is contained in the litigation record (pleadings).¹³ In *Makate v Vodacom (Pty) Ltd*¹⁴, the Court held:

‘... Deciding factual disputes is ordinarily not the role of apex courts. Ordinarily, an apex court declares the law that must be followed and applied by the other courts. Factual disputes must be determined by the lower courts and when cases come to this court on appeal, they are adjudicated on the facts as found by the lower courts. ...’

I do not consider that the applicant has made out any proper case for leave to appeal where it comes to the findings of fact I have made.

[15] What is apparent to me is that much of the application for leave to appeal is founded on the same kind of unwanted and spurious technical point taking to try and establish a basis for relief that actually does not exist. Of particular concern is that the applicant has still been unable to provide any answer to her insurmountable difficulty that based on her own case as pleaded, she cannot interdict something that has come to pass. She makes broad and unsubstantiated allegations of public interest and the practical effect intervention may have, without answering what is the real issue, being that interdictory intervention is not possible for something that had already happened. And all the complaints set out in the application for leave to appeal about the conduct of the chairperson and the like can be fully and adequately dealt with in the normal course, with full substantial redress being available, without resorting to the kind of proceedings the applicant had launched. I do not consider there to exist any reasonable prospect that an Appeal Court would decide otherwise.

[16] According to the applicant, my judgment impacts negatively on her pending review application, despite it not being before me. Even if that may be true, it

¹³ See *Coca-Cola Beverages Africa (Pty) Ltd v Competition Commission and Another* (2024) 45 ILJ 1507 (CC) at para 71.

¹⁴ 2016 (4) SA 121 (CC) at para 39.

simply does not matter because what I may find in this case cannot decide her review. What I was called on to decide, in simple terms, is an interdict. I was not called on to decide a review. Whether or not the applicant's review application under section 158(1)(h) is competent is an issue for a review Court to decide for itself, no matter what I may have found in my judgment which only concerns an urgent application for an interdict. This simply cannot establish a case for leave to appeal. In any event, even when considering whether a clear right or a prima facie right, as the case may be, for an interdict exists, it is surely trite that it must involve at least some assessment of the prospects of success on review. The applicant, in her founding affidavit, pleaded that she had prospects of success on review. In that context, I must decide the question., To now suggest that I should not, just because the actual review application itself is not before me, is simply nonsensical. But I must emphasise, nowhere in my judgment did I finally decide the merits of the review application.

- [17] I remain convinced that the current application is leave to appeal is yet another component of the stratagem embarked upon by the applicant from the very start of the disciplinary proceedings against her, to obstruct the same as far as possible with the view to ultimately scuppering it. This cannot be allowed to perpetuate. I considered the following *dicta* in *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*¹⁵ to be apposite *in casu*:

'This was a case which should have ended in the Labour Court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law, that is different. But this kind of case should not reappear continuously in courts on

¹⁵ (2014) 35 ILJ 2399 (LAC) at 2406B-F.

appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.’

[18] Ultimately, the applicant continues to be unable to appreciate the distinction between the jurisdiction of this Court and the powers of this Court. The applicant has been unable to advance any cogent legal argument to establish any prospects of success on appeal where it comes to any of the jurisdictional findings I have made. In short, the applicant has been unable to answer or contradict, based on a sound legal foundation, any of my findings relating to the jurisdiction of this Court. The applicant, in my view, has no prospect of success on appeal where it comes to the issues of jurisdiction. And that should really be the end of it for her.

[19] The applicant finally seeks leave to appeal against the costs order I made. The decision to award costs entails the exercise of a discretion, and the applicant has simply made out no case that the discretion as I have exercised it, would be assailable on appeal, in line with the following *dictum* in *Coates Brothers Ltd v Shanker and Other*¹⁶:

‘An appellant must show, in an appeal from a decision in a lower court, that the court a quo ‘acted capriciously, or acted upon a wrong principle, or in a biased manner, or for insubstantial reasons, or committed a misdirection or an irregularity, or exercised its discretion improperly or unfairly ...’

[20] In the end, I am compelled to reiterate that the applicant should never have pursued the original application in the first place, as nothing stood in her way of asserting all her rights not to be unfairly dismissed, which is after all what this case is really all about, in the ordinary course, and pursuant to the dispute resolution process under the LRA. The persistent reliance on unlawfulness, despite all has been said about this not being competent or envisaged under the LRA, is an untenable position, and must end.

[21] All the above considered, I thus conclude that the applicant has failed to show that there exists a reasonable prospect that another Court would come to a different conclusion, and in my view the applicant has no prospect of success

¹⁶ (2003) 24 ILJ 2284 (LAC) at para 5.

on appeal at all. Considering also what has actually happened, since the application was brought in the first place, the applicant in essence by way of this application for leave to appeal, seeks a determination from an Appeal Court where there is no longer any live *lis* between the parties where it comes to the actual conduct sought to be interdicted. This matter also does not concern any issue of particular public interest, or any question of law that requires determination by an Appeal Court, with the applicable jurisdictional issues being trite. The application for leave to appeal thus falls to be dismissed. It is, all considered, meritless.

[22] This only leaves the issue of costs in this application for leave to appeal. I have a wide discretion where it comes to the issue of costs, by virtue of the provisions of section 162(1) of the LRA. Even though I consider the application for leave to appeal to be a continuation of the abuse of process that exists in this case, and being for all intents and purposes meritless, I have not been favoured with opposing submissions to the application for leave to appeal from the respondents. I shall therefore decide the application for leave to appeal on an unopposed basis, and make no order as to costs.

[23] For all the reasons as set out above, the following order is made:

Order

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

S. Snyma

Acting Judge of the Labour Court of South Africa