



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JS878/2017

In the matter between:

NUMSA OBO AUBREY DHLUDHLU & OTHERS

Applicants

and

MARLEY PIPE SYSTEMS (PTY) LTD

Respondent

Heard: In chambers

Delivered: 19 March 2026

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

ITZKIN, AJ

[1] The applicants in this matter, who are a group of seven former employees of the respondent (referred to herein as “the employees”),¹ seek leave to appeal against this Court’s judgment wherein it was found that their dismissals were substantively fair (at the level of sanction) and their unfair dismissal claims are therefore dismissed.

¹ They are Thabo Mphuthi, Vusi Mthimkulu, Moses Dhludhlu, Potia Mosekedi, Thabang Pitsi, Hopolang Khumalo and Sarah Mokoena.

[2] They advance six intended grounds of appeal:

- 2.1 The Court erred and misdirected itself when it held that at issue requiring determination at the outset is whether any regard may be had to violence associated with strike of employees, despite the fact that the plaintiffs were exonerated (ground one).
- 2.2 The Court erred in finding that the strike was not a response to unjustified conduct of the defendant (ground two).
- 2.3 The Court erred and misdirected itself in finding that the evidence establishes that further distribution was actively thwarted by a shop steward (ground three).
- 2.4 The Court erred and misdirected itself in holding that the defendant adduced evidence of substantial financial losses and operational disruption following the strike (ground four).
- 2.5 The Court erred and misdirected itself in finding that the defendant has discharged its onus of proving that dismissal was a proportionate and substantively fair sanction (ground five).
- 2.6 The Court erred and misdirected itself in holding that the dismissal of the applicants was substantively fair and the unfair dismissal claims are therefore dismissed (ground six).

[3] The test for leave to appeal entails evaluating whether the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[4] The test is not met in relation to the first four grounds.

- 4.1 Ground one appears to rest on a misunderstanding of the judgment. The respondent had contended, in its heads of argument in the remitted proceedings, that in assessing the seriousness of the misconduct, the violence associated with the strike ought to be considered an aggravating factor. In other words, it argued that this factor rendered the employees' misconduct in participating in the unprotected strike more serious. In the judgment, the Court rejected that argument and found that the violent

nature of the strike ought not to be a factor that weighs in the Court's consideration of sanction. The Court's approach was thus to the employees' benefit, as the issue of sanction was not influenced by that consideration.

4.2 With reference to ground two, there was simply no evidence to substantiate a contention that the strike was a response to unjustified conduct on the part of the respondent.

4.3 With reference to ground three, the evidence clearly established that steps were taken to seek to distribute ultimata but that the process was undermined by the intervention of a shop steward.

4.4 With reference to ground four, the defendant adduced evidence of substantial financial losses and operational disruption following the strike, and the judgment recognised that whilst this was a relevant factor, not all losses could necessarily be attributed to the unprotected strike itself (given that some may well have flowed from the assault and associated conduct).

[5] In my assessment, grounds five and six fall into a different category. An assessment of proportionality in determining substantive fairness (on sanction) entails a value judgment which is not straightforward, and there exists scope for different decision makers to attribute different amounts of weight to the various factors at play in a specific case.

[6] By way of example, although this Court was not persuaded that the limited duration of the strike was a weighty consideration in the circumstances of this case, there exists a reasonable prospect of a different view thereon being taken by an appeal court, which in turn, may influence its assessment of substantive fairness at the level of sanction.

[7] For these reasons, I am inclined to grant the application for leave to appeal.

Order

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

R Itzkin

Acting Judge of the Labour Court of South Africa

LABOUR COURT