



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

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[Redacted]

11/03/26

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C593/23

In the matter between :

MUSHROOM AND THINGS (PTY)LTD

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION (CCMA)**

1st Respondent

GERALD JACOBS

2nd Respondent

NKOSEMVELA HUBERT MAGWANYA

3rd Respondent

Decided: In Chambers

Date: 11 / March / 2026

JUDGMENT: LEAVE TO APPEAL

GURA/AJ

- [1] This is an application for leave to appeal brought by the Applicant against part of the judgment by this Court. Delivered on 17 December 2025. Leave is sought on one ground only, confined to the following aspects of the judgment:

1.1. Ground 1: The Court's failure, at paragraph [43] of the judgment, to determine the Applicant's ground of review that the Commissioner's ground of review that the Commissioner's factual findings were irreconcilable with his conclusion on substantive fairness, a ground properly pleaded in the founding affidavit and developed at length in the written heads of argument.

1.2. Thus, the Applicant is not seeking leave to appeal against any other aspect of the judgment, save to state that a successful appeal will result in the award for retrospective reinstatement being set aside, as well as the order for costs.

[2] I have considered the grounds upon which leave to appeal is sought and reflected on the judgment. I have also borne in mind the test applicable to applications of this nature. I am not persuaded that the appeal has reasonable prospects of success or that another court will come to a different conclusion. All of the issues set out in the notice of application for leave to appeal were considered in the hearing.

[3] I further take cognizance of the fact that the judgment of this court went into length in relation to the Contract of Employment and *Repudiation, Caveat subscripto* and the parole evidence rule. The judgment by this Court is, in actual fact, sounded like this Court's Basic Principles of Contract and Specific Contracts lectures. I thus urge the Applicants to again read the following paragraphs of the Award by the Commissioner: paragraphs 61,62,63 until 66,70 and 72.

[4] Lastly, the cutting-edge *stare decisis* by Judge van Niekerk (as he then was), in the *SA Broadcasting Corporation v Commission for Conciliation, Mediation and Arbitration & Others*¹ at footnote 21 of the judgment of this Court from pages 15 to 16. Thus, substantive fairness in relation to repudiation settled, relating to repudiation. In a nutshell, the Applicant may well succeed in a civil court suing for damages. I reiterate the sentiments by Judge van Niekerk in this judgment as well, that the civil suit and or prospects of success the Applicant

¹ (J6145/00) [2002] ZALC 184; (2003) 24 ILJ 211 (LC) (7 November 2002).

herein may have for civil damages, cannot and does not hold water, under the auspices of the Labour Relations Act².

[5] The application for leave to appeal stands to be dismissed.

[6] In the result I make the following order.

Order

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


[Redacted signature]

Acting Judge of the Labour Court of South Africa

² Act 66 of 1995, as amended.