



- (1) Reportable: NO
(2) Of interest to other Judges: NO

Signature

Date

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)**

CASE NO: JR1269/2020

In the matter between:

**NATIONAL EDUCATION HEALTH AND
ALLIED WORKERS UNION OBO MEMBERS**

Applicant

and

ESSENTIAL SERVICES COMMITTEE

First Respondent

SIBONGISENI SITHOLE NO

Second Respondent

INDEPENDENT ELECTORAL COMMISSION

Third Respondent

Heard: In Chambers

Delivered: Judgment is handed down by service on the parties, by email, on 27 March 2026.

JUDGMENT

DANIELS J

Introduction

- [1] The applicant seeks leave to appeal against the order and judgment of this court handed down on 5 March 2025. The judgment deals *inter alia* with the limitations on the right to strike, and consideration of the Electoral Act No. 73 of 1998 and the Municipal Electoral Act No. 27 of 2000. There appeared, at face value, to be a conflict between these Acts. The dispute involved important questions of law which have not previously arisen.

Legal principles and analysis

- [2] The third respondent filed its opposing submissions and sought condonation for the late filing of such submissions. There are several factors to be considered, to determine whether it is in the interest of justice to grant condonation. The court must consider¹ *inter alia* the length of the delay; the explanation for the delay; the prospects of success for the party seeking condonation; the importance of the issues; the prejudice to the other party; and the effect of the delay on the administration of justice. Importantly, here, the period of the delay was short, the delay was adequately explained, and the third respondent has prospects of success. I considered the various other factors as well. In the exercise of my discretion, it is in the interests of justice to grant condonation.
- [3] Section 17(1) of the Superior Courts Act No. 10 of 2013 provides that leave to appeal should only be granted by the court *a quo* where it is of the view that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard.

¹ *Grootboom v National Prosecuting Authority & another* (2014) 35 ILJ 121 (CC) at paras 50 and 51

This dispute concerns inter alia limitations of the right to strike, the jurisdiction of the Essential Services Committee, and the interpretation of conflicting legislation. These are important questions of law and involve issues of public importance. In the circumstances, there are compelling reasons to grant leave to appeal.

Conclusion

[4] In the circumstances, an order is made as follows:

- (1) Condonation is granted for the late filing of the third respondent's opposing submissions,
- (2) The application for leave to appeal is granted,
- (3) The costs of the application for leave to appeal are costs in the appeal.

R Daniels

Judge of the Labour Court of South Africa