



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C97/2024

In the matter between:

NOGXOLO BIGBOY

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
PRIVATE SECURITY SECTOR**

First Respondent

JP HANEKOM N.O.

Second Respondent

RISK&CO / ATCOGLO

Third Respondent

Heard: 9 April 2026 (In chambers).

This judgment is handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down this ruling is deemed to be 10h00 on 10 April 2026.

JUDGMENT

DE KOCK, AJ

Introduction

[1] The applicant, Nogxolo Bigboy, applies for leave to appeal against the judgment of this Court handed down on 14 October 2025 in which his application to review and set aside the arbitration award of Commissioner JP Hanekom was dismissed. The award, issued on 7 February 2024 under the auspices of the National Bargaining Council for the Private Security Sector, upheld the substantive and procedural fairness of the applicant's dismissal by the third respondent (Atcoglo). The application for leave to appeal is opposed by the third respondent.

Applicable Legal Test

- [2] Section 17(1)(a) of the Superior Courts Act¹ provides that leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard.
- [3] The wording is deliberate. The legislature moved away from the earlier, more permissive formulation that focused on whether another court may come to a different conclusion. The current test requires that the judge be satisfied that the appeal would have a reasonable prospect of success, a higher threshold than mere arguability.

¹ Act 10 of 2013.

- [4] In *Smith v S*², the court explained that “reasonable prospects of success” means more than that the case is arguable. There must be a sound, rational basis for concluding that another court would come to a different conclusion.
- [5] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*³, the Labour Appeal Court underscored the gate-keeping function of the Labour Court. It cautioned that disputes that raise no novel point of law and involve no misinterpretation of existing law should ordinarily end in the Labour Court and not be allowed to “reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.”

Condonation

- [6] The applicant’s submissions in support of the application for leave to appeal were due on or before 11 November 2025, being within ten days of the filing of the leave to appeal application itself. The submissions were not filed within that period. The applicant seeks condonation for the late filing.
- [7] The applicant’s affidavit characterises the delay as “approximately 40 court days.” This calculation is incorrect. The period from 12 November 2025 (the first day after the due date) to 7 January 2026 (the date of filing) must be assessed having regard to the *dies non* provisions. The December/January court recess and public holidays falling within that period are excluded from the count of court days.⁴ On a proper calculation, the delay amounts to approximately 24 court days.
- [8] Furthermore, the Registrar brought the requirement to file submissions to the applicant’s attention on 12 December 2025. The *dies non* period commenced on 16 December 2025. Accordingly, two court days, 12 and 15 December 2025, fell between the Registrar’s notification and the commencement of the recess, during which the applicant took no steps. From 16 December 2025, however, no court days ran. The filing on 7 January 2026 was itself within the *dies non* period and

² (475/10) [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) at para 7.

³ (CA23/2012); [2013] ZALAC 35; (2014) 35 ILJ 2399 (LAC).

⁴ Rule 1 of the Rules Regulating the Conduct of Proceedings in the Labour Court (GN 4775 of 3 May 2024). The period 16 December to 15 January (both dates inclusive) constitutes *dies non* for purposes of calculating prescribed time periods.

preceded the resumption of the court term on 16 January 2026. The two court days of inaction between notification and the commencement of the recess do not, in the circumstances, weigh materially against the applicant, and do not alter the overall assessment in favour of granting condonation.

- [9] The applicant's explanation for the delay, as set out in his supporting affidavit sworn on 30 December 2025, is that he was not *au fait* with the rules and *modus operandi* of this Court and believed that the application for leave to appeal, on its own and without supporting submissions, would suffice. He has no legal advisor or representation. He submits that the third respondent will suffer no prejudice and that he himself will suffer immense prejudice if condonation is refused.
- [10] Weighing the relevant considerations: the delay, properly calculated, is a relatively short period of 24 court days; a significant portion of the calendar period was absorbed by the court recess; the applicant is self-represented; and the third respondent, whilst opposing, does not identify any specific prejudice flowing from the delay beyond the need to incur further legal costs. Having regard to the interests of justice and the overall circumstances, the Court is prepared to grant condonation.
- [11] The Court proceeds to consider the merits of the application for leave to appeal.

Merits of the Application for Leave to Appeal

General observations

- [12] The judgment under attack properly identified and applied the correct review framework.⁵ The Court found, as it was entitled to, that: (a) review is not an appeal; (b) factual errors or disagreements with credibility findings do not, of themselves, constitute a reviewable irregularity; and (c) an award stands where the outcome is one a reasonable arbitrator could reach on all the material before him.

⁵ *Sidumo & another v Rustenburg Platinum Mines Ltd & others* (2007) 28 ILJ 2405 (CC); *Herholdt v Nedbank Ltd* [2013] ZASCA 97; (2013) 34 ILJ 2795 (SCA) at para 25; *Gold Fields Mining SA (Pty) Ltd v CCMA & others* (JA2/2012) [2013] ZALAC 28; [2014] 1 BLLR 20 (LAC).

[13] The applicant's six proposed grounds of appeal reprise, in substance, the same six grounds advanced on review. Each was individually considered, rejected on the facts, and assessed cumulatively for reasonableness. This Court expressly found: the commissioner made credibility findings based on probabilities; the employer's witnesses were consistent and corroborated by documentary evidence; the applicant was an unreliable witness who offered bare denials; and the outcome was supported by substantial evidence.

Grounds 1–4: Credibility, evidence and probabilities

[14] The applicant's challenge to the events of 27 January 2023 and 10 February 2023, Pape's training role, Martin's alleged contradictions, and the weight attached to Burger's email are quintessential factual disputes of a credibility and probability nature. Such disputes do not give rise to a reviewable irregularity, and this Court's endorsement of the commissioner's findings on these issues is not susceptible to challenge on appeal.

[15] The proposed grounds disclose no legal misdirection, no misconceived enquiry, and no irrationality in the commissioner's approach or this Court's assessment thereof. There is no realistic prospect that another court would arrive at a different conclusion on any of Grounds 1 to 4.

Ground 5: Abandonment of the disciplinary hearing

[16] The finding that the applicant abandoned the disciplinary hearing is unimpeachable on the evidence. The applicant conceded that he did not attend the reconvened hearing on 17 April 2023, and that his reason for not attending was his unilateral assessment that the evidence to be presented was irrelevant. An employee who elects not to participate in a disciplinary hearing after proper notice cannot subsequently complain of procedural unfairness. Ground 5 discloses no reasonable prospect of success on appeal.

Ground 6: Racist remark and sanction

[17] The applicant admitted making a racist remark to Pape. The commissioner found, and this Court upheld the finding, that this conduct independently merited

summary dismissal. The Labour Appeal Court has confirmed that racist remarks in the workplace constitute serious misconduct that fundamentally undermines workplace dignity and trust.⁶ The commissioner's conclusion that dismissal was an appropriate sanction, independently supported by this admitted conduct, cannot be said to be one that no reasonable arbitrator could reach. Ground 6 discloses no reasonable prospect of success on appeal.

[18] It follows that even if all other grounds were to enjoy any traction before an appellate court, which this Court does not accept, the independently sufficient basis for dismissal constituted by the admitted racist remark would in any event sustain the outcome.

No compelling reason

[19] The applicant raises no novel legal issue, identifies no conflicting judgments, advances no point of public importance, and discloses no jurisprudential uncertainty. There is accordingly no other compelling reason why the appeal should be heard.

Overall Assessment

[20] The applicant has failed to demonstrate a realistic, reasonable prospect that another court would arrive at a different conclusion in respect of any of the grounds advanced. The application discloses no compelling reason for the appeal to be heard. Notwithstanding the granting of condonation, the application for leave to appeal must accordingly be dismissed.

Costs

[21] The third respondent does not seek a costs order. This Court's judgment was made without a costs order against the applicant. In the exercise of the Court's discretion and having regard to the applicant's status as a self-represented litigant, there will be no order as to costs.

Order

⁶ Legal Aid South Africa v Mayisela [2019] ZALAC 1; (2019) 40 ILJ 1526 (LAC) at para 49.

[22] In the premises, the following order is made:

1. The application for condonation of the late filing of the applicant's submissions in support of the application for leave to appeal is granted.
2. The application for leave to appeal is dismissed.
3. There is no order as to costs.

C. de Kock

Acting Judge of the Labour Court of South Africa