



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 419 /2022

In the matter between:

MOHAMED SALLY

APPLICANT

AND

CPES (PTY) LTD T/A VIVI SA

RESPONDENT

Heard: IN CHAMBERS

Delivered: 30 March 2026

JUDGMENT- APPLICATION FOR LEAVE TO APPEAL

MAHALELO, AJ

Introduction

- [1] This is an application for leave to appeal against the whole of this Court's judgment and order delivered on 30 January 2026 in which the Court found that the applicant had not established constructive dismissal as contemplated in section 186(1) (e) of the LRA and dismissed the applicant's claim of unfair discrimination.

- [2] Several grounds of appeal were raised in support of this application. It is unnecessary to list them in this judgment. Suffice to mention that the respondent submitted that those grounds are meritless and should be rejected by the court.

Test for Leave to Appeal

- [3] Section 17 (1) of the Superior Court Act¹ deals with the relief of leave to appeal. In terms thereof, leave to appeal may only be granted (a) where a judge/s are of an opinion that (a) the appeal “*would*” not “*may*”, have reasonable prospects of success (b) there are some compelling reasons why the appeal should be heard, including the existence of conflicting judgments on the matter under consideration.
- [4] It has been confirmed that the use of the words “*only*” and “*would*” implies that the threshold is set too high to a point where this Court must only give leave in instances where a definitive prospect exist that the appeal would succeed.
- [5] The court in *Mgedezi Gasbat Nxumalo v The National Bargaining Council for the Chemical Industry (NBCCI) and Others*² conveniently summarised the approach to an application for leave to appeal as follows:

“The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word would in section 17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (See Daantjie Community and Others v Crocodile Valley Citrus Company (Pty) Ltd and Another (75/ 2008) [2015] ZALCC 7(28 July 2015). Further, this is not a test to be applied lightly- the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal

¹ 10 of 2013

² JR 1170/2023 Unreported

Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment, or where there is some legitimate dispute on the law (see the judgment by Davis JA in Martin and East(Pty) Ltd v NUM (2014) 35 ILJ 2399 (LCA), and also Kruger v S 2014(1) SACR 369 (SCA) and the ruling by Steenkamp J in Oasys Innvations (Pty Ltd v Henning and Another (C536/15, 6 November 2015..."

Conclusion

[7] I have had regard to the test for leave to appeal and the submissions in terms of rule 67(5) by the parties. I concluded that there are no reasonable prospects on appeal.

[8] In the circumstances leave to appeal application stands to fail.

Order

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

MB MAHALELO

Acting Judge of the Labour Court of South Africa.

Appearances

For the Applicant: Adv F Boda SC; Adv Moolla

Instructed by: AR Mahomed Attorneys

For the Respondent: Adv AJ Nel

Instructed by: Goldberg Attorneys Inc