



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not reportable

Case no: C302/2024

In the matter between:

ADELE LEWIS

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

GERT VAN DER BERG N.O.

Second Respondent

VAN DE VENTER MOJAPELO (PTY) LTD

Third Respondent

Delivered: 23 April 2026

**JUDGMENT
(LEAVE TO APPEAL)**

MacKENZIE, AJ

Introduction

[1] The third respondent seeks leave to appeal against the order that I made on 25 November 2025.

- [2] The application for leave to appeal is dated 3 December 2025. However, the application was only brought to my attention on 12 February 2026 upon receipt of the third respondent's written submissions in support of its application for leave to appeal.
- [3] The third respondent's grounds of appeal can be summarised thus.
- 3.1 First, the Court's conclusion of intolerability is unsustainable on the accepted facts.
 - 3.2 Second, the Court wrongfully elevated the sick note dispute into intolerability.
 - 3.3 Third, the Court failed to give proper consideration and weight to the fact that the applicant did not lodge a grievance and resigned before the issue could be addressed.
 - 3.4 Fourth, the Court did not properly consider that the applicant's salary dispute flowing from the sick note dispute could have been pursued as a separate substantive claim and grievance.
 - 3.5 Fifth, the Court misapplied the principles stated in *Albany Bakeries*.
 - 3.6 Sixth, the Court failed to properly weigh the alternatives available to resignation that were open to the applicant.
 - 3.7 Seventh, the Court speculated in concluding that any grievance process would be futile.
 - 3.8 Eighth, the Court's reasoning in concluding that the sick note dispute was the final straw is internally contradictory.
 - 3.9 Ninth, the sick note and communication issues were not raised in the CCMA referral.
 - 3.10 Tenth, the Court erred in awarding the applicant her unpaid salary for November 2023 since that was neither claimed in the CCMA nor proven by the applicant.
 - 3.11 Finally, the evidence bore out that the applicant's resignation was pre-planned, further supporting the inappropriateness of compensation.

The test for leave to appeal

- [4] Leave to appeal is governed by section 17(1)(a) of the Superior Courts Act, 2013 and may only be granted where the Court is of the opinion that either (i) the appeal would have a reasonable prospect of success; or (ii) there is some other compelling reason why the appeal should be heard.
- [5] The main principles governing leave to appeal are the following.
- 5.1 The threshold is that a different court '*would*' come to a different conclusion, not that it '*could*' do so. The test is thus a stringent one.¹
- 5.2 An applicant for leave to appeal must demonstrate, on proper grounds, a realistic prospect of success. It is not enough that the case is arguable or not hopeless. There must be a sound and rational basis to conclude that another court would likely reach a different result.²
- 5.3 A compelling (meaning '*cogent; strong; convincing*'³) reason may lie in an important question of law or a discrete issue of public importance with wider impact, but the merits nevertheless remain vitally important and often decisive.⁴ There is, however, no closed list and each case turns upon its own facts.

Analysis and discussion

Intolerability and the sick note dispute

- [6] The first, second and eighth grounds are closely related. They concern the finding that the employment relationship had become intolerable.
- [7] As explained in the main judgment, the breakdown in communication and the termination of remote work were not, in themselves, determinative of

¹ *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others* (2016) 37 ILJ 1485 (LC) at para 3.

² *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 (25 November 2016) at para 16; *City Tshwana Metropolitan Municipality v Kleinot N.O. and Others* (Leave to Appeal) [2025] ZALCJHB 314 (15 July 2025) at para 8.

³ *Erasmus Superior Court Practice* RS 5, 2025, D-108.

⁴ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) at para 2.

intolerability. However, they provided important context demonstrating that the employment relationship had become fragile. It was against that backdrop that the third respondent's conduct in relation to the applicant's medical condition must be (and was) assessed.

[8] Upon receipt of the medical certificate and accompanying information, the third respondent became aware that the applicant was suffering from stress, anxiety and depression. At that point, it was obliged to respond with an appropriate degree of care and sensitivity. Instead, the third respondent:

8.1 questioned the legitimacy of the medical certificate without proper investigation;

8.2 accused the applicant of malingering and dishonesty;

8.3 withdrew an earlier acceptance of the medical explanation; and

8.4 withheld the bulk of the applicant's salary.

[9] This was done without taking any steps whatsoever to verify the medical evidence or to engage constructively with the applicant's condition. The cumulative effect of this conduct, viewed objectively, was to destroy the trust relationship. The applicant was effectively accused of dishonesty at a time when she was, based upon undisputed medical evidence, medically unfit for work, and was deprived of remuneration without due process.

[10] In those circumstances, I was satisfied that there is no reasonable prospect that another court would find that the applicant's continued employment was not rendered intolerable.

[11] Accordingly, I consider that these grounds have no reasonable prospect of success.

Failure to lodge a grievance

[12] On the third ground, the absence of a formal grievance is not decisive. It is common cause that the applicant engaged directly with both Mr Woznica (the third respondent's chief executive officer) and Mr Louw (the third respondent's human resources executive) in an attempt to resolve the situation. Those engagements did not result in any meaningful resolution.

Instead, the third respondent persisted in its position, including maintaining allegations of dishonesty and withholding remuneration. In those circumstances, the absence of a formal grievance does not undermine the finding of intolerability. Accordingly, I consider that this ground has no reasonable prospect of success.

Availability of alternative remedies

[13] On the fourth ground, the third respondent contends that the salary dispute could have been pursued separately. This submission artificially disaggregates what was, in reality, a composite course of conduct. The withholding of remuneration was not a neutral or isolated dispute; it formed part of the very conduct that rendered the employment relationship intolerable. The third respondent's suggestion that the applicant ought to have pursued a separate claim ignores the cumulative impact of its conduct as employer. Accordingly, I consider that this ground likewise has no reasonable prospect of success.

The decision in Albany Bakeries

[14] On the fifth ground, the third respondent relies on *Albany Bakeries* to argue that the applicant was required to exhaust internal remedies. That submission is misplaced. I do not read the decision to lay down the principle of an inflexible obligation to pursue internal remedies *regardless of the circumstances*. The enquiry remains whether a *reasonable* alternative to resignation existed. It serves no purpose and would be an exercise in formality for an employee to pursue all avenues of recourse where it is evident from the particular facts of the matter that those avenues have no reasonable prospect of resolving the issue.

[15] In circumstances where the employer had accused the applicant of dishonesty, withdrawn acceptance of medical evidence, and withheld remuneration without investigation, as stated in the main judgment, the availability of a theoretical remedy does not negate the existence of intolerability. Accordingly, I consider that this ground has no reasonable prospect of success.

Alternatives to resignation and alleged futility

[16] The sixth and seventh grounds concern the availability of alternatives and the alleged speculative finding of futility regarding their outcome. However, these submissions overlook the undisputed evidence that the applicant attempted to engage the relevant decision-makers without success. The conclusion that further internal processes would not have provided effective relief was not speculative, but grounded in the conduct already exhibited by the third respondent. Accordingly, I consider that these grounds likewise have no reasonable prospect of success.

CCMA referral

[17] On the ninth ground, the third respondent contends that certain issues were not raised in the CCMA referral and that the Court should have taken account of this evidentiary consideration. In my view, no negative inference can be drawn from the level of detail contained in the referral form. CCMA referral forms are not pleadings and are not intended to set out a comprehensive factual or legal case. The purpose of the referral is to trigger the dispute resolution process, not to define the issues with precision. Accordingly, I consider that this ground likewise has no reasonable prospect of success.

Compensation

[18] On the tenth ground, the third respondent contends that the Court erred in awarding the compensation relating to the unpaid balance of the applicant's salary for November 2023. As stated in the main judgment, section 194(1) empowers the Court to award compensation that is just and equitable. The award was not made as a discrete claim for unpaid salary, but as part of a broader compensatory determination flowing from the unfair constructive dismissal. Accordingly, I consider that this ground also has no reasonable prospect of success.

Alleged pre-planned resignation

[19] Finally, the third respondent contends that the applicant's resignation was pre-planned. However, the undisputed evidence was that the applicant only became registered as an estate agent in December 2023, after her

resignation. The existence of subsequent employment does not, without more, negate intolerability or render compensation inappropriate. Accordingly, I consider that this ground too has no reasonable prospect of success.

Conclusion and costs

[20] The third respondent's submissions ultimately amount to a disagreement with the conclusions reached in the main judgment. While it is conceivable that another court might approach aspects of the matter differently, the test is not whether it could do so but whether it would come to a different conclusion. Having regard to the evidence and the applicable legal principles, I am not persuaded that another court would do so. Nor is there a compelling reason why the appeal should be heard.

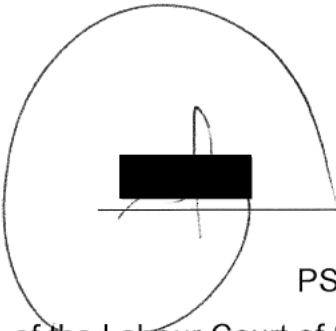
[21] Accordingly, the application falls to be dismissed.

[22] Regarding costs, despite the matter not meeting the threshold for leave to appeal, I consider it fair that there be no order as to costs.

Order

[23] In the result, the following order is made:

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



PS MacKenzie

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: CS Bosch

Instructed by: Carlo Swanepoel Attorneys Inc (Mr E Ramos)

For the third respondent: S Snyman of Snyman Attorneys

LABOUR COURT