



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR377/23

In the matter between:

TWO RIVERS PLATINUM (PTY) LIMITED

Applicant

and

ASSOCIATION OF MINeworkERS AND

CONSTRUCTION UNION (AMCU)

OBO THABO MECWI

First Respondent

HERALD NTALE-MATSEPE N.O.

Second Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Third Respondent

Considered: In Chambers

Delivered: 12 May 2026

JUDGMENT - APPLICATION FOR LEAVE TO APPEAL

RAJAH, AJ

Introduction

- [1] The applicant seeks leave to appeal against the judgment of this Court delivered on 10 December 2025, in which the applicant's application to review and set aside the arbitration award issued by the second respondent was dismissed.
- [2] In the review judgment, this Court concluded that the applicant had failed to demonstrate any reviewable irregularity in the arbitration proceedings and that the decision reached by the commissioner fell within the band of decisions that a reasonable decision-maker could reach.
- [3] The applicant now seeks leave to appeal against that judgment.

The Test for Leave to Appeal

- [4] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166 (1) of the Labour Relations Act¹ (LRA), which provides that any party to proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court.
- [5] The test to be applied in an application such as the present is that referred to in section 17 of the Superior Courts Act². Section 17(1) provides:
- “(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgements on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

¹ Act 66 of 1995, as amended.

² Act 10 of 2013.

- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

- [6] To succeed in an application for leave to appeal, an applicant must satisfy the court *a quo* that there is a reasonable prospect that another court would come to a different conclusion. The test is not whether another court could come to a different conclusion, but whether there is a reasonable prospect that another court would do so.
- [7] It is further well established that an applicant must persuade the court that the proposed appeal has reasonable prospects of success. Appeals should be confined to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute of law.
- [8] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*,³ this Court confirmed that the threshold applicable in applications for leave to appeal is a stringent one. The Court emphasised that the use of the word “would” in section 17(1)(a)(i) of the Superior Courts Act signals a raising of the threshold from the previous formulation that another court might reach a different conclusion.
- [9] The Court further emphasised that leave to appeal should not be granted lightly, particularly in labour matters where the statutory imperative of the expeditious resolution of labour disputes requires that appeals be confined to those matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where a legitimate dispute of law arises.
- [10] In *Cook v Morrison and Another*,⁴ the Supreme Court of Appeal held that the existence of reasonable prospects of success may be a necessary condition for leave to appeal, but additional considerations may arise where the matter raises a substantial point of law, is of significant importance to the parties, or where refusal of leave would result in a manifest denial of justice.

³ (2016) 37 ILJ 1485 (LC).

⁴ *Cook v Morrison and Another* [2019] ZASCA 8.

- [11] The Supreme Court of Appeal in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*⁵ reiterated that the requirement to obtain leave to appeal is a valuable mechanism to ensure that scarce judicial resources are not expended on appeals that lack merit.
- [12] In *Mont Chevaux Trust v Tina Goosen and 18 Others*,⁶ the court similarly held that the threshold for granting leave to appeal has been raised under section 17 of the Superior Courts Act, and that the use of the word “would” indicates that the applicant must demonstrate a realistic chance of success on appeal.
- [13] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*⁷ the court held that an applicant for leave to appeal must demonstrate a sound and rational basis for concluding that there are reasonable prospects of success. A mere possibility of success, an arguable case, or one that is not hopeless is insufficient.

The Grounds of Appeal

- [14] The applicant seeks leave to appeal on six grounds set out in its written submissions.
- [15] In summary, the applicant contends:
- 15.1 that this Court failed to consider and make a finding on whether the employee had refused to obey an instruction allegedly issued by Mr Mmadi to proceed underground on 23 June 2022.
 - 15.2 that the commissioner committed a gross irregularity by disregarding what is characterised as unchallenged evidence of Mr Mmadi and by failing to properly consider alleged contradictions in the employee’s explanation.
 - 15.3 that the commissioner misconceived the nature of the enquiry at arbitration.

⁵ 2013 (6) SA 520 (SCA)

⁶ [2014] JDR 2325 (LCC).

⁷ *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/15) [2016] ZASCA 176 (25 November 2016).

15.4 that this Court failed to properly record and consider the grounds of review and to provide adequate reasons for its conclusion.

15.5 that this Court ought to have found that the commissioner committed a gross irregularity and that the dismissal of the employee was substantively fair.

[16] Properly construed these grounds are not discrete. They amount to a challenge to the commissioner's evaluation of the evidence, in particular the finding that no instruction had been issued, and to the conclusions drawn from that evidence.

Evaluation

[17] The grounds advanced by the applicant ultimately invite this Court to reconsider the evidentiary findings made by the commissioner and to substitute its own assessment of the evidence.

[18] That is not the function of a review court. In review proceedings under section 145 of the LRA, the enquiry is not whether the commissioner's decision is correct but whether it falls within the band of decisions that a reasonable decision-maker could reach.

[19] In the review judgment, this Court considered the evidentiary record before the commissioner, including the evidence concerning whether an instruction had been issued to the employee and the communication between the relevant supervisors and the employee on the day in question.

[20] Having considered the record and the submissions made by the parties, this Court concluded that the commissioner had considered the material evidence and that the outcome reached did not fall outside the bounds of reasonableness.

[21] The applicant's submissions in the present application amount to little more than a disagreement with the manner in which the commissioner and this Court evaluated the evidence.

[22] The fact that the applicant interprets the evidence differently does not establish that the commissioner's decision was one that a reasonable decision-maker could not reach.

[23] The issues raised by the applicant concern the weight to be attached to particular aspects of the evidence and the conclusions to be drawn therefrom. These are matters that were considered in the review proceedings and do not give rise to any legitimate dispute of law.

Prospects of Success

[24] Having considered the grounds advanced in the application for leave to appeal, I am not persuaded that another court would reasonably arrive at a different conclusion.

[25] The applicant has not demonstrated that this Court misapplied the applicable review principles or committed any material error of law.

[26] Furthermore, the issues raised in the present application do not raise any novel question of law or issue of broader importance warranting the attention of the Labour Appeal Court.

[27] In the circumstances, the applicant has failed to satisfy the threshold set out in section 17(1)(a) of the Superior Courts Act.

[28] In the premise the following order is made:

Order

1. The application for leave to appeal is dismissed.

2. There is no order as to costs.

S. Rajah

Acting Judge of the Labour Court of South Africa

LABOUR COURT