



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 74946/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE: 30/04/2026

SIGNATURE

In the matter between:

NELSON MBOMBI

Applicant

and

MINISTER OF POLICE

Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MZUZU, AJ

[1] The applicant applied for leave to appeal against the whole judgment and including the order as to costs delivered on 22 May 2025.

[2] The applicant raised numerous grounds for leave to appeal and filed submissions in writing and verbally, and the respondent in opposition of the application for leave to appeal, filed submissions as well in writing and verbally.

[3] I have taken time to peruse and consider same, and I do not intend to repeat those herein.

The test for leave to appeal

[4] It is trite that there is no automatic right of appeal against a judgment of the High Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy the court that there is a reasonable prospect that another court would come to a different conclusion.¹

[5] Section 17(1) of the Superior Courts Act² provides that leave to appeal may only be granted if the appeal has a reasonable prospect of success or if there is some compelling reason why the appeal should be heard. The Superior Courts Act has raised the threshold for granting leave to appeal.

[6] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion³. The test indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

[7] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

[8] In *Seatlholo and other v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,⁴ this court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

¹ See *Woolworths Ltd v Matthews* [1999] 3 BLR 288 (LC).

² Act 10 of 2013.

³ Based on the facts that is before this court on questions of law and that was stated in the matter of Miller, 1957 (4) SA 542 (A).

⁴ (2016) 37 ILJ 1485 (LC) at para 3.

"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 word "would" in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Dantjie Community and others v Crocodile valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2018). 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 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 law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C536/15, 6 November 2015)."

[9] In deciding this application for leave to appeal, I am also guided by the dicta of Supreme Court of Appeal (SCA) where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*⁵ that:

"...The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal."

Evaluation of the Application for Leave to Appeal

[10] I have duly considered the written and verbally submissions advanced in support of, and in opposition to, the application for leave to appeal, with due regard to the grounds for leave to appeal by applying the applicable legal test.

[11] It is evident that the application does not meet the high threshold for leave to appeal to be granted as the application is rather a record of the Plaintiff's

⁵ 2013 (6) SA 520 (SCA) at para 24.

dissatisfaction with the outcome and re-argument of the issues already ventilated, submission of new evidence that was not submitted at the hearing of the trial and decided upon during the trial.

[12] The purpose of an appeal to the LAC is not to provide an applicant with an avenue for re-argument or an opportunity to re-open what has already been finally adjudicated. An appeal is limited to matters where there is a reasonable prospect that another court would find differently.

[13] The applicant failed to prove that an appeal would have a reasonable prospect of success on each of the grounds upon which he relies and failed to pass the test provided in section 17 of Superior Court Act.

Order

[14] In the premises I make the following order:

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


N MZUZU
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES

Heard on : 25 March 2026
Judgment delivered on : 30 April 2026
For the Applicant : Adv D Thumbathi

For the Respondent : Adv M.V Magagane