



(1) Reportable: NO  
(2) Of interest to other Judges: NO

Signature

Date

**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Case No: C632/2023

In the matter between:

**MALUTI – A PHOFUNG MUNICIPALITY**

Applicant

and

**SOUTH AFRICAN MUNICIPAL WORKERS UNION**

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION**

Second Respondent

**INDEPENDENT MUNICIPAL & ALLIED TRADE UNION**

Third Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT  
BARGAINING COUNCIL**

Fourth Respondent

**SAM MAKHUBU**

Fifth Respondent

Heard: In Chambers

Delivered: 27 May 2026

---

## JUDGMENT

---

### DANIELS J

- [1] This judgment concerns an application for leave to appeal and a related application for condonation. The applicant sought final relief by applying to review and set aside the fifth respondent's conduct on the grounds that it was unlawful. Judgment was handed down on 19 January 2026, with the application being dismissed.
- [2] The applicant filed an application for leave to appeal on 9 February 2026 and delivered its submissions on 2 March 2026. The applicant seeks condonation of the late filing of its submissions, which were filed 4 days past the deadline. The delay was occasioned by difficulties securing timely instructions to proceed with the application. The short delay is adequately explained, and there is no prejudice. In the interests of justice, condonation is granted.
- [3] Section 17(1) of the Superior Courts Act No. 10 of 2013 provides that leave to appeal may be granted only where the court a quo is of the opinion that the appeal has a reasonable prospect of success, or where there is some other compelling reason for the appeal to be heard. Leave to appeal should not be granted unless there is a sound and rational basis to conclude that there is a reasonable prospect of success.<sup>1</sup>
- [4] There is no need to explore all the grounds of appeal. From what follows, it is plain that the applicant has no reasonable prospects of success.

---

<sup>1</sup> *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] JOL 36940 (SCA) at paras 16 – 17

- [5] Quite simply, given the material factual disputes, the applicant was unable to discharge the onus.
- [6] The applicant made sweeping allegations regarding the central issue in the dispute, relying on two documents: the staff establishment and the approved annual budget. However, when its allegations were disputed, the applicant failed to produce such documents. This was insufficient. With applications, the affidavits stand as both pleadings and as evidence. It is an established rule of evidence that when the terms of a written document are at issue, the document should be produced, whether this be the original or a copy.<sup>2</sup>
- [7] In *National Director of Public Prosecutions v Zuma*<sup>3</sup> Harms DP (as he then was) stated crisply: “*Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.*” On the *Plascon Evans*<sup>4</sup> test, final relief should only be granted when the facts alleged by the applicant, which are admitted by the respondent, taken with those facts alleged by the respondent, justify the relief. On that test, the application did not get out of the starting blocks.

## Order

- [8] The application for condonation is granted, but the application for leave to appeal is dismissed.

**RN Daniels**  
**Judge of the Labour Court of South Africa**

---

<sup>2</sup> *R v Amod & Co (Pty) Ltd and another* 1947 (3) SA 32 (A) at para [40]

<sup>33</sup> 2009 (2) SA 277 (SCA) at para [26]

<sup>4</sup> *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)