



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C383/2023

In the matter between:

WESTERN CAPE EDUCATION DEPARTMENT

Applicant

and

WESLEY NEUMANN

First Respondent

EDUCATION LABOUR RELATIONS COUNCIL

Second Respondent

JONATHAN GRUSS N.O.

Third Respondent

PREMIER OF THE WESTERN CAPE

Fourth Respondent

HELEN ZILLE

Fifth Respondent

BRIAN SCHREUDER

Sixth Respondent

PUBLIC SERVICE COMMISSION

Seventh Respondent

DEPARTMENT OF PUBLIC SERVICE AND

ADMINISTRATION

Eighth Respondent

Heard: On paper

Delivered: 3 June 2026

This ruling on the application for leave to appeal was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down the ruling is deemed to be 3 June 2026.

JUDGMENT

DE KOCK, AJ

Introduction

- [1] This is an application by the Western Cape Education Department ("the WCED") for leave to appeal against the judgment of this Court delivered on 5 January 2026 ("the main judgment"). In the main judgment, the arbitration award of the third respondent dated 19 June 2023 was reviewed and set aside, the sanction of dismissal was substituted with a final written warning, and the WCED was directed to reinstate Mr Wesley Neumann as Principal of Heathfield High School with retrospective effect to 20 May 2022. No order was made as to costs.
- [2] The WCED's Notice of Intention to Apply for Leave to Appeal is dated 23 January 2026 and its heads of argument 5 February 2026. Mr Neumann's Notice to Oppose and opposing submissions are dated 12 February 2026. The papers were, however, not placed before this Court within any reasonable time after they were filed. Through correspondence directed to the registrar by the WCED's legal team, the Court was made aware in May 2026 that the application had not been received in the Court file. Mr Neumann's opposing submissions were forwarded to the Court by the registrar on 15 May 2026 and the WCED's application and heads of argument on 18 May 2026. The delay in the delivery of this judgment is occasioned by these procedural difficulties, none of which is attributable to the parties.

- [3] The application has been determined on paper. Neither party requested an oral hearing.

Applicable Legal Test

- [4] Section 17(1)(a) of the Superior Courts Act¹ provides that leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [5] In *Smith v S*², the court explained what the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince the court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, and that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.

Analysis

- [6] The WCED advances a number of grounds, expanded upon in its heads of argument. Central among them is the contention that the conduct attached to the 26 July 2020 letter ought to have been characterised as gross insubordination rather than insolence, and that this Court erred in the framework it applied to language said to carry racial connotations in the workplace. The WCED also takes issue with the substantive compliance finding under Charge 2 and with the engagement with its case on selective discipline. Further grounds are directed at

¹ Act 10 of 2013.

² [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) at para 7.

the application of section 193(2)(b) of the Labour Relations Act 66 of 1995, the WCED having opposed reinstatement on intolerability grounds, and at the application of the review standard under section 145 of the LRA.

- [7] Having considered the grounds advanced and the opposing submissions, the Court is satisfied that the threshold for leave to appeal has been crossed. Several of the grounds raise issues on which it is reasonably arguable that another court could come to a different conclusion.
- [8] Compelling reasons for the appeal to be heard are, in any event, present. The main judgment was marked reportable. It deals with the conduct of a school principal during the COVID-19 national state of disaster, set against an instruction issued by the Head of Department in the midst of that disaster. It addresses the line between robust internal expression and insubordination at senior management level in a state department, and the framework for assessing the use of historically-loaded language in workplace correspondence. It also substitutes dismissal with a final written warning and orders reinstatement nearly four years after the event. These are issues that will recur in educator discipline and in public-sector employment matters arising from the disaster period. The Labour Appeal Court should have the opportunity to consider them.

Costs

- [9] Costs of this application fall to be considered under section 162 of the LRA, having regard to *Zungu v Premier of the Province of KwaZulu-Natal and Others*³. The ordinary norm in labour matters is that costs do not follow the result. Where leave to appeal is granted, the appropriate course is that the costs of this application stand over for determination by the appellate court.

Order

³ (CCT136/17) [2018] ZACC 1; (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC); 2018 (6) BCLR 686 (CC) (22 January 2018).

[10] In the premises, the following order is made:

1. Leave to appeal to the Labour Appeal Court against the judgment and order of this Court of 5 January 2026 is granted.
2. The costs of the application for leave to appeal shall stand over for determination by the Labour Appeal Court.



C. de Kock

Acting Judge of the Labour Court of South Africa

LABOUR COURT