




(1) Reportable Yes/No	<input checked="" type="checkbox"/>
(2) Of interest to other Judges: Yes/No	<input checked="" type="checkbox"/>
(3) Revised	
 Signature	08/06/2026 Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: C1817/2024

In the matter between:

VERSAPAK (PTY) LTD

Applicant

and

METAL AND ENGINEERING BARGAINING

COUNCIL

First Respondent

A SINGH-BHOOPCHAND N.O.

Second Respondent

NUMSA obo BRIAN THEODORE APRIL

Third Respondent

Heard: **In Chambers**

Delivered: **08 June 2026**

JUDGMENT

MKHATSHWA, AJ

Introduction

- [1] This is an opposed application for leave to appeal to the Labour Appeal Court against the whole judgement of this Court delivered on 15 January 2026.
- [2] The Applicant in this matter, at the review application was Mpact Operations (Pty) Ltd (the Old Employer). According to the Applicant in this application for leave to appeal, the Old Employer was taken over by the Applicant. Hence the different citation.

Grounds of appeal

- [3] The Applicant argues that this Court erred in finding that:
- 3.1 the Second Respondent had not arrived at an unreasonable conclusion in finding that the toilet paper found in possession of the Employee on 21 October 2022 was not the property of the Old Employer.
 - 3.2 the Second Respondent had not arrived at an unreasonable conclusion in finding that the Employee was in unauthorized possession of said toilet paper on 21 October 2022.
- [4] In support of the above grounds, the Applicant argues that the Court failed to consider the following evidence:
- 4.1 The unchallenged evidence of Ms Genene Barnard that the toilet paper found in the Employee's possession on 21 October 2022 is unique in that it cannot be found in retail stores and is bought directly from a supplier by the Applicant.
 - 4.2 The email from the service provider that the toilet paper cannot be purchased by the general public.
 - 4.3 The third Respondent's failure to address, let alone deny, the allegation as to the uniqueness of this toilet paper in the founding papers.
 - 4.4 The Employee's concession under cross examination that the toilet paper which he brought to his disciplinary hearing was different to the

toilet paper which belonged to the Applicant and which was found in the Employee's possession on 21 October 2022.

The test for an application for leave to appeal

- [5] Applications for leave to appeal are regulated by Rule 67 of the Rules for the Conduct of Proceedings in the Labour Court. The Rule does not deal with the test for the granting or otherwise of the application.
- [6] Guidance is to be found in section 17 of the Superior Courts Act¹. The point was made in *Dexgroup (Pty) Ltd v Trust Group International (Pty) Ltd and others*² 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.
- [7] In terms of section 17(1)(a)(i) of the Superior Courts Act, leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success.
- [8] Although stated *obiter*, it was held in *Mont Chevaux Trust v Tina Goosen*³ that the wording of the subsection raises the bar of the test that has to be applied to the merits of the proposed appeal before leave should be granted in that the use by the legislature of the word "would" indicates a measure of certainty that another court will differ from the court whose judgement is sought to be appealed against. It has also been held that the use by the legislature of the word "only" in section 17 (1) is a further indication of a more stringent test⁴.
- [9] The point was emphasized by the Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha*⁵, where Schippers AJA held as follows:

"[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable

¹ Act 10 of 2013.

² 2013 (6) SA 520 (SCA) at para 13.

³ 2014 JDR 2325 (LCC). See also: *Acting National Director of Public Prosecutions v Democratic Alliance In re Democratic Alliance v Acting National Director of Public Prosecutions* (19577/09) [2016] ZAGPPHC 489 (24 June 2016) at para 25.

⁴ See: *Matoto v Free State Gambling and Liquor Authority* (4629/2015) [2017] ZAFSHC 80 (8 June 2017).

⁵ 2016 JDR 2214 (SCA) at paras 16 and 17. See also: *Black Bond Surfacing (Pty) Ltd v Dynapac Ltd* Case Number 59158/2021 dated 7 December 2022

prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[10] The issues raised in this application (which form part of the record of the review application) were ventilated in the arbitration and they were considered by this Court in the review application.

[11] Having considered the grounds advanced by the Applicant for leave to appeal and the Third Respondent's detailed submissions in response thereto, this Court has concluded that the appeal has no reasonable prospects of success or that another court will come to a different conclusion. There is also no other compelling reason why the appeal should be heard as there are no conflicting judgments on the matter at hand. Therefore, there is no basis on which this Court can grant the present application.

[12] In the premises the following order is made:

Order

1. The Application is dismissed.
2. There is no order as to costs.



M. Mkhathswa

Acting Judge of the Labour Court of South Africa