



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

Signature

24/06/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR2672/2021

In the matter between:

**DEPARTMENT OF FORESTRY, FISHERIES AND
THE ENVIRONMENT**

Applicant

and

**COMMISSIONER TJ SONO N.O.
GENERAL PUBLIC SERVICE SECTORAL
BARGAINING COUNCIL
PSA obo LUTHANDO KIVA
DEPARTMENT OF PUBLIC SERVICE
AND ADMINISTRATION
DEPARTMENT OF AGRICULTURE, LAND
REFORM AND RURAL DEVELOPMENT**

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Decided : In Chambers

Judgment : 24 June 2026

This judgment was handed down electronically by emailing a copy to the parties. The 24 June 2026 is deemed to be the date of delivery of this judgment).

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

TEBEILE AJ

Introduction

- [1] This is an application for leave to appeal against the whole judgment and order of this Court delivered on 15 August 2024. In that judgment, this court dismissed the applicant's review application brought in terms of section 145 of the Labour Relations Act¹ ("the LRA"), which sought to review and set aside an arbitration award issued by the first respondent on 20 April 2021. The application for leave to appeal is unopposed.
- [2] It is important within the context of effective administration of justice that I must mention that it appears that the applicant brought its application for leave to appeal on 05 September 2024. However, the said application for leave to appeal was unfortunately never brought to my attention until on or about 27 May 2026 when I received an email from Mr Tshepo Sethole from the office of the registrar of this Court enquiring about the said application for leave to appeal. The email dated 27 May 2026 reads:

"I trust that this email finds you well.

We have received an email from the Applicant in the above matter, enquiring as to the status of the application for leave to appeal that was submitted in September 2024. The said application is directed at appealing a judgment delivered by you.

¹ Act 66 of 1995, as amended.

Kindly confirm whether the application was received by you, and thereafter provide an update regarding the status thereof, including any further steps taken or outstanding.”

- [3] Unfortunately, on 27 May 2026, it was for the very first time that I was informed of the applicant’s application for leave to appeal.
- [4] In response to the email dated 27 May 2026 from office of the registrar, I requested that the application for leave to appeal be forwarded to me and that the court file be arranged for my consideration to ensure speedy hearing of this application. I must admit that the delay in hearing of this application is prejudicial to both parties and the interest of justice. The Court is regretful for lengthy delay in determination of this application for leave to appeal.
- [5] I sincerely tender my sincere apologies to the parties for the inconvenience caused by the delay on the hearing of this application for leave to appeal.

Background

- [6] The background to this matter is set out in the main judgment and is briefly summarised here. The third respondent, Mr Luthando Kiva, was employed by the applicant as a Senior Forestry Scientist. He referred a dispute to the second respondent, demanding that he be translated to the Occupation Specific Dispensation (OSD) retrospectively from 2012. He alleged that he met the criteria for translation in terms of Annexure B of the OSD.
- [7] The first respondent found that Annexure B of the OSD was applicable to Mr Kiva’s circumstances and ordered the applicant to comply with Annexure B and translate Mr Kiva to the OSD with effect from 2012.

[8] The applicant sought to review and set aside this award on several grounds, including that the first respondent lacked jurisdiction, that the order was one of specific performance beyond the second respondent's powers, and that there was a non-joinder of the Department of Public Service and Administration (DPSA). This Court dismissed the review application, finding that the first respondent's decision was one that a reasonable decision-maker could reach. The applicant now seeks leave to appeal that judgment.

The test for leave to appeal

[9] The test for leave to appeal is governed by section 17(1) of the Superior Courts Act². Section 17(1)(a) provides 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 the appeal should be heard, including conflicting judgments on the matter under consideration.

[10] The test is now a stringent one. In *Mkhitha*³, the Supreme Court of Appeal held that 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.⁴ There must be a sound, rational basis for concluding that there is a reasonable prospect of success on appeal.⁵

[11] The Labour Appeal Court in *Martin and East (Pty) Ltd v National Union Mineworkers and Others*⁶ emphasized that this Court should

² Act 10 of 2013.

³ *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176.

⁴ *Id* at para 17.

⁵ *Id*.

⁶ (2014) 35 ILJ 2399 (LAC).

be cautious when granting leave to appeal. Davis JA went on and held that the LRA was “designed to ensure an expeditious resolution of industrial disputes”, and that means, the courts “need to be cautious when leave to appeal is granted, as should this Court when petitions are granted”. The statutory imperative of the expeditious resolution of labour disputes requires that appeals be limited to those matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is a legitimate dispute on the law.⁷

Evaluation of the grounds for leave to appeal

- [12] I have considered the grounds for leave to appeal raised by the applicant and the submissions made in support thereof. I have also reflected on the judgment delivered on 15 August 2024, which I consider to be thorough and well-reasoned.
- [13] The applicant’s primary argument is that this court erred in finding that the dispute was about the application of a collective agreement, and that the arbitrator’s order for compliance with Annexure B constituted an impermissible order for specific performance. I am not persuaded that another court would reach a different conclusion on this point.
- [14] The first respondent was tasked with determining whether Mr Kiva was entitled to be translated to the OSD in terms of the collective agreement. The order requiring the applicant to comply with Annexure B is a natural and necessary consequence of finding that Mr Kiva met the criteria for translation. It is not, as the applicant suggests, an order for specific performance akin to reinstatement,

⁷ See also *Seatholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others* (2016) 37 ILJ 1485 (LC).

but rather an order to give effect to the provisions of a binding collective agreement.

[15] The applicant also contends that this Court erred in its approach to the issue of non-joinder of the DPSA. This Court correctly held that this issue was never raised during the arbitration and that the applicant had failed to demonstrate that the DPSA had a direct and substantial interest in the proceedings which would be prejudiced by its non-joinder.

[16] In my view, the grounds for leave to appeal advanced by the applicant are essentially a repetition of the arguments raised in the review application. They do not identify any material error of law or fact in the judgment of this court delivered on 15 August 2024. In my view, the applicant has failed to show that there is a reasonable prospect that another court would come to a different conclusion.

[17] I am mindful of the applicant's argument that the appeal raises an important question regarding the proper exercise of the court's discretion. However, as set out above, the principles governing the review of arbitration awards and the interpretation of collective agreements are well-established. The applicant has failed to identify any novel or unresolved legal issue that would constitute a compelling reason for the appeal to be heard.

Conclusion

[18] Having considered the application, the grounds for leave to appeal, and the applicable legal principles, I am not convinced that the applicant has established that there is a reasonable prospect of success on appeal, nor that there is any other compelling reason why the appeal should be heard.

[19] In the circumstances, the application for leave to appeal falls to be dismissed.

Costs

[20] The general rule in this Court is that costs do not follow the result. The application for leave to appeal is unopposed and therefore an appropriate order is to make no order as to costs.

Order

[21] In the result, the following order is made:

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

Shadrack Tebeile

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. M.H Mhambi

Instructed by: State Attorney, Pretoria (Mr N Mkhwanazi)

For the Third Respondent: No appearance