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

TDM	28 July 2026
Signature	Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case Number: JR 2282 / 22

In the matter between:

G4S CASH SOLUTIONS (PTY) LTD

Applicant

and

NUMSA obo MOSINYANE AND 8 OTHERS

First Respondent

NATASHA MONI N.O. (AS COMMISSIONER)

Second Respondent

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT AND LOGISTICS INDUSTRY**

Third Respondent

Decided: In Chambers

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 28 July 2026

Summary: Leave to appeal – no proper grounds made out – application for leave to appeal dismissed

JUDGMENT – LEAVE TO APPEAL

SNYMAN, AJIntroduction

- [1] In this instance, the applicant had brought an application to review and set aside an arbitration award of an arbitrator appointed by the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) to arbitrate an unfair dismissal dispute between the applicant and all of the individual first respondents. The application was brought by the applicant in terms of section 145 as read with section 158(1)(g) of the Labour Relations Act (LRA)¹.
- [2] In a written judgment handed down on 16 April 2026, I upheld the review application brought by the applicant, set aside the arbitration award of the second respondent and substituted such arbitration award with a determination that the dismissal of the individual first respondents was substantively and procedurally fair.
- [3] The first respondent was dissatisfied with the order and judgment against them, and filed an application for leave to appeal on 6 May 2026. Written submissions as contemplated by Rule 67(5) were incorporated into the application for leave to appeal. The applicant opposed the application for leave to appeal and filed its own written submissions on 14 May 2026. the application for leave to appeal is thus ripe for determination.
- [4] Rule 67(6) of the Labour Court Rules provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason to direct otherwise and will therefore determine the leave to appeal application by the first respondent in chambers.

Analysis

¹ Act 66 of 1995 (as amended).

[5] Leave to appeal is not there for the asking. This is evident from section 17(1)(a) of the Superior Courts Act², which provides that: ‘(a) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that: (i) the appeal would have a reasonable prospect of success; or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on a matter under consideration.*’

[6] In *J & L Lining (Pty) Ltd v National Union of Metalworkers of SA and Others* (2)³ the Court summarized the legal position that applies when a litigant seeks leave to appeal from this Court, as follows:

‘Leave to appeal is not there for the asking. When deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another court would come to a different conclusion to that of the court a quo, or in other words, whether the appeal would have a reasonable prospect of success. This was summarised in *SA Clothing & Textile Workers Union & others v Stephead Military Headwear CC*, as follows:

‘It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal.’

[7] As to the meaning of ‘*reasonable prospects of success*’, the Court in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*⁴ said:

‘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 prospect of

² Act 10 of 2013.

³ (2019) 40 ILJ 1303 (LC) at para 5.

⁴ [2016] JOL 36940 (SCA) at paras 16 – 17. See also *Ramakatsa and Others v African National Congress and another* [2021] JOL 49993 (SCA) at para 10, where it was held: ‘*The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist ...*’.

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.

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.'

- [8] Next, and as to what would constitute a compelling reason for another Court to entertain the appeal, the *Court in Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁵ had the following to say:

'... A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. ...'

- [9] From the outset, I am compelled to deal with what is often a go to contention relied on by litigants that are dissatisfied with the outcome of a review application. This contention involves a complaint that the Court failed to apply the review test, and instead applied an appeal test. The reason why this kind of complaint always appears palatable is that it can be easy for any litigant, depending upon which perspective is applied when considering a judgment, to say that, no, the Court is dealing with the case like an appeal. But more often than not, this is a complaint based on the subjective perceptions of the litigant, and the current case is no different. I was at pains to point out in my judgment what the review test was that needed to be applied, and then, when dealing with each ground of review, I sought to illustrate with proper and complete reference to the facts and the relevant provisions of law, why the outcome arrived at by the arbitrator was unreasonable, based on the proper application of the review test. I remain unconvinced that there is any substance in this

⁵ 2020 (5) SA 35 (SCA) at para 2. See also *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* 2013 (3) SA 315 (SCA) at para 5; *Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others* 2016 (3) SA 317 (SCA) at para 23; *Tshwane City and Others v Nambiti Technologies (Pty) Ltd* 2016 (2) SA 494 (SCA) at para 6.

ground raised by the first respondent for seeking leave to appeal. I conclude that the first respondent has no prospect of success on appeal in this respect.

[10] In addition, it appears to me that the first respondent done very little in adding anything to the arguments already presented to me when the matter was first argued. They effectively continue to rehash all the same arguments, and really do nothing more than recording a disagreement with the findings I had made. To disagree with the findings and contend they are wrong, does not substantiate a case for leave to appeal, having due regard to the tests set out above. The first respondent, overall considered, has simply not demonstrated a reasonable prospect that another Court would come to a different conclusion.

[11] The first respondent effectively takes issue with the fact that I sought to deal with the evidence presented in the arbitration as a whole, in order to ascertain whether the outcome arrived at by the arbitrator was reasonable. The first respondent, for example, refers to the manner in which I deal with the evidence relating to inconsistency, and effectively suggests that I should defer entirely to the factual findings made by the arbitration. The same kinds of contentions are raised where I came to other findings I had made. But there can be no substance in this argument. It is an essential competent of the proper application of the review test to ascertain whether the findings of fact made by an arbitrator can be sustained based on proper and complete conspectus of the record. This Court is not compelled to effectively defer to findings of fact made by arbitrators, as suggested by the first respondent.

[12] A number of authorities of the LAC bear specific mention. In *Anglo Platinum (Pty) Ltd (Bafokeng Rasemone Mine) v De Beer and Others*⁶ the Court said that: '*... the Labour Court must broadly evaluate the merits of the dispute and consider whether, if the arbitrator's reasoning is found to be unreasonable, the result is, nevertheless, capable of justification on all the material before the arbitrator, including for reasons not considered by the arbitrator. ... It follows from this that an arbitrator's award will be reasonable when there is a material connection between the evidence and the result, or, put differently, when the result is supported by some evidence.*' Next, in *SA Breweries (Pty) Ltd v*

⁶ (2015) 36 ILJ 1453 (LAC) at para 11.

*Hansen and Others*⁷ the Court said: ‘... Essentially, this test requires the Labour Court, sitting as a court of review, to enquire whether the decision under review is one that a reasonable decision maker could not reach on the evidential material available ...’, whilst in *Transnet Rail Engineering v Mienies and Others*⁸ it was held: ‘... It is important to bear in mind that the conclusion reached must account for all the evidence adduced ...’. Further, in *SA Municipal Workers Union and Others v eThekweni Municipality and Others*⁹ it was stated: ‘... The question to be asked is whether, on the evidentiary material presented to the arbitrator, the decision of the arbitrator, as evidenced in the award, can be justified ...’. Lastly, in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*¹⁰ it was held as follows: ‘In short: A reviewing court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion that is reasonable. ...’.

[13] The aforesaid authorities puts paid to the bulk of the leave to appeal grounds raised by the first respondent, because they in essence have an issue with the fact that I considered all the evidence on record and then evaluated if the conclusions arrived at by the arbitrator was reasonable and / or justified based on that evidence. This does not ‘*contradict*’ the findings of the arbitrator on the merits, as the first respondent argues. It simply tests whether the findings of the arbitrator are sustainable on the basis that they are reasonable in the light of the evidence as a whole. The argument of the first respondent suggests that this Court cannot contradict factual findings of an arbitrator on the merits of the matter on review, which is simply patently wrong, and flies in the face of the review test.

[14] Dealing specifically with the arbitrator’s inconsistency finding, it was plainly unsustainable, not only on the facts, but also based on the application of the legal principles relating to inconsistency. The first respondent has not raised anything in its submissions supporting its application for leave to appeal that

⁷ (2017) 38 ILJ 1766 (LAC) at para 10.

⁸ (2015) 36 ILJ 2605 (LAC) at para 18.

⁹ (2017) 38 ILJ 158 (LAC) at para 20. See also *National Health Laboratory Service v Yona and Others* (2015) 36 ILJ 2259 (LAC) at para 27; *City of Cape Town v Freddie and Others* (2016) 37 ILJ 1364 (LAC) at para 49.

¹⁰ (2014) 35 ILJ 943 (LAC) at para 16.

serves to convince me otherwise. I believe there is no reasonable prospect that another Court would come to a different conclusion in this respect.

[15] The first respondent's contentions where it came to my findings on the issue of procedural unfairness is entirely misdirected. It is in fact the first respondent that misconceives exactly what I found to be the case. In the end, the arbitrator's finding of procedural unfairness was unsustainable because there was no evidence to support it, and she strayed beyond the grounds of procedural fairness she was required (called on) to decide to which she is bound. Added to this, there was no evidence of prejudice to the employees. The first respondent has been unable to advance any cogent grounds that my findings in this respect would be susceptible to being overturned on appeal. The first respondent has no prospects of success on appeal in this respect.

[16] It is even suggested that I erred in substituting the award in terms of section 145(4) of the LRA, rather than remitting it back to the bargaining council for arbitration *de novo*. There is zero merit in this contention. This Court has a wide discretion where it comes to the granting of relief under section 145(4) of the LRA.¹¹ As held in *National Union of Metalworkers of SA v Commission for Conciliation, Mediation and Arbitration and Others*¹²: 'Section 145(4)(a) provides that if an arbitration award is set aside the Labour Court may determine the dispute in the manner it considers appropriate. That expressly gives the Labour Court wide powers that include substituting its decision for that of a CCMA commissioner ...'. The first respondent has failed to establish any legitimate basis upon which the interference in this kind of discretion would be justified, in line with the following *dictum* in *Coates Brothers Ltd v Shanker and Other*¹³:

'An appellant must show, in an appeal from a decision in a lower court, that the court a quo 'acted capriciously, or acted upon a wrong principle, or in a biased manner, or for insubstantial reasons, or committed a misdirection or an irregularity, or exercised its discretion improperly or unfairly ...'

¹¹ Section 145(4)(a) reads: 'If the award is set aside, the Labour Court may — (a) determine the dispute in the manner it considers appropriate ...'.

¹² (2022) 43 ILJ 530 (CC) at para 66.

¹³ (2003) 24 ILJ 2284 (LAC) at para 5. See also *Chetty v Baker McKenzie* (2022) 43 ILJ 1599 (LAC) at para 7

[17] And finally, the first respondent artificially seeks to construct this matter as having some sort of public importance. But that is not so. It is an individual unfair dismissal dispute, like the many hundreds of thousands that are decided by the CCMA and bargaining councils every year. The fact that it involves a group of employees does not change this. It is still an instance of individual misconduct. As I said in my original judgment, there is nothing complicated or controversial in this case. There simply exists no justification to elevate it to one of particular public interest. The first respondent employees simply materially failed to carry out their duties with due and proper care, and failed to provide any explanation for such failure, leading in a substantial loss to the applicant as their employer. The fact that they initially received the benefit of an unsustainable arbitration award does not give them some kind of unique impetus.

[18] I am therefore not convinced that leave to appeal is justified in this case. The first respondent has not advanced a cogent and substantiated basis upon which it can be said that they enjoy reasonable prospects of success on appeal. There is also no pressing issue of public interest that would call for consideration by a Higher Court. This matter cries out for immediate finality. A further delay caused by a pending appeal is simply not appropriate. In this respect, I find guidance in the judgment of *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*¹⁴ where the Court decided:

‘This was a case which should have ended in the Labour Court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law, that is different. But this kind of case should not reappear continuously in courts on

¹⁴ (2014) 35 ILJ 2399 (LAC) at 2406B-F.

appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.’

[19] This only leaves the issue of costs in the applications for leave to appeal. I have a wide discretion where it comes to the issue of costs, by virtue of the provisions of section 162(1) of the LRA. On the basis of the same reasoning as found in my original judgment, I consider no order as to costs as being fair and appropriate.

[20] For all the reasons as set out above, the following order is made:

Order

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

S. Snyman

Acting Judge of the Labour Court of South Africa