



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: J 1751/2023

DEAN DE JAGER

FIRST PLAINTIFF

FRANK JEAN-PAUL DEL PONTES

SECOND PLAINTIFF

FRANCIOUS BARNARDUS DE JAGER

THIRD PLAINTIFF

and

METHANO GROUP (PTY) LTD

DEFENDANT

Decided: In Chambers

Judgment: 7 August 2026

This judgment was handed down electronically by email circulation to the parties. The date for hand-down is deemed to be 7 August 2026.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J

[1] The Defendant applied for leave to appeal against the whole of the judgment and order, delivered on 12 May 2026.

[2] I have considered the grounds for appeal raised by the Defendant as well as the submissions made in support and in opposition thereof, and I do not intend to repeat those herein.

The test for leave to appeal

- [3] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act¹ (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.²
- [4] Section 17(1) of the Superior Courts Act³ provides that leave to appeal may only be granted if the appeal has a reasonable prospect of success or if there is some other compelling reason why the appeal should be heard. The Superior Courts Act has raised the threshold for granting leave to appeal.
- [5] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion. The test indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.
- [6] It is further trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. The prospects of success must not be remote and a sound, rational basis for the conclusion that there are prospects of success must be shown to exist.
- [7] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

¹ Act 66 of 1995, as amended.

² See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

³ Act 10 of 2013.

- [8] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,⁴ this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

‘The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015).’

- [9] In deciding this application for leave to appeal, I am also guided by the *dicta* of the Supreme Court of Appeal (SCA) where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*⁵ 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. It should in this case have been deployed by refusing leave to appeal.’

This application

- [10] I have considered the submissions made and the grounds for appeal and applying the applicable test, I am not convinced that the Defendant has made out a case for leave to appeal to be granted.
- [11] Considering the grounds for leave to appeal, it is evident that the application does not meet the high threshold for leave to appeal to be granted. The purpose of an appeal to the LAC is not to provide a litigant with an avenue for re-argument or an opportunity to re-open what has already been finally

⁴ (2016) 37 ILJ 1485 (LC) at para 3.

⁵ 2013 (6) SA 520 (SCA) at para 24.

adjudicated. An appeal is limited to matters where there is a reasonable prospect that another court would find differently.

- [12] This matter concerns the application of established and trite principles governing postponement applications and dismissals for operational reasons (retrenchment). There is no novel issue, nothing unique, and no legitimate dispute about the applicable legal principles involved. In short: there is no legitimate dispute on the law and the Defendant is unable to cross this hurdle.
- [13] There is also not a reasonable prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion.
- [14] On the refusal to grant postponement, the Defendant, in seeking leave to appeal, filed an affidavit to set out the reasons why postponement should have been granted. It is evident from the papers filed in the application for leave to appeal that the Defendant seeks to remedy the reality that it did not present sufficient evidence to justify a postponement. The Defendant seeks to introduce new and amplified facts that were not provided when the application for postponement was made. For instance, this Court was never informed that Mr Malatji was unable to testify virtually because he did not have access to files and records left in his office or that he did not foresee the possibility that he would not be able to return to South Africa for the trial. This is not permissible, and this application must be decided having regard to the factual matrix as it was presented at the time the postponement application was refused.
- [15] Insofar as the Defendant seeks leave to appeal against the refusal to grant a postponement and the awarding of costs, those issues were decided by exercising a discretion. In *MEC for Environmental Affairs and Development Planning v Clairison's CC*⁶ the Supreme Court of Appeal described the test that applies to the review of a discretion as follows:

When the law entrusts a functionary with a discretion it means just that: the law gives recognition to the evaluation made by the functionary to whom the discretion is entrusted, and it is not open to a court to second-guess his evaluation. The role of a court is no more than to ensure that the decision-maker has performed the function with which he was entrusted.

⁶ 2013 (6) SA 235 (SCA) paras 18 and 20.

..... The law remains, as we see it, that when a functionary is entrusted with a discretion, the weight to be attached to particular factors, or how a particular factor affects the eventual determination of the issue, is a matter for the functionary to decide, and as he acts in good faith (and reasonably and rationally) a court of law cannot interfere.

- [16] When the exercising of a discretion is challenged, the test that the court, called upon to interfere with the discretion, will apply is to evaluate whether the decision maker acted capriciously, or upon the wrong principle, or with bias, or whether or not the discretion exercised was based on substantial reasons or whether or not the decision maker adopted an incorrect approach.
- [17] Considering the test to be applied in challenging the exercise of a discretion, the Defendant has not made out a case to show that the discretion was not exercised judicially or that there is a possibility that the LAC would come to a different conclusion.
- [18] On the merits, the Defendant seeks leave to appeal because the *“court erred by overlooking submissions in the Defendant’s answering affidavit..” “the factual findings are vitiated by ignoring material evidence in the court file”* and by making findings in favour of the Plaintiffs on aspects that are disputed by the Defendant.
- [19] The Defendant did not lead any evidence in the trial, and it is not open to the Defendant to reference ‘evidence’ that was not led or presented. The Defendant clearly does not understand that the contents of pleadings do not constitute evidence *per se*, but that evidence must be presented and tested at trial. The Defendant led no evidence.
- [20] The Defendant raised as a ground for appeal that *‘the court erred by overlooking submission in the Defendant’s answering affidavit that the Plaintiffs were informed and consulted with the Union representatives (sic), because consultation does not mean consulting the employees individually.’* This ground for leave to appeal is also indicative of the Defendant’s lack of understanding of Court process and the value of evidence. Not only did the Defendant not lead any evidence, but this Court was faced with a case where the Plaintiffs presented direct, *viva voce* and uncontested evidence that they did not belong

to a union and that there was no consultation as required by section 189 of the LRA, with a union or otherwise.

[21] This application for leave to appeal has no merit. It is an opportunistic abuse of process, and in my view it would be just and fair to dismiss it with costs.

Order

I therefore make the following order:

1. Leave to appeal is dismissed with costs.

Connie Prinsloo

Judge of the Labour Court of South Africa