



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JS 949/2021

In the matter between:

SOUTH AFRICAN COMMERCIAL CATERING

AND ALLIED WORKERS UNION obo

TSHOKODO AND 210 OTHERS

Plaintiff

and

MASS DISCOUNTERS (PTY) LTD T/A

GAME AND DION WIRED STORES

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 Plaintiff applied for leave to appeal against the whole of the judgment and order, delivered on 29 May 2026.
- [2] I have considered the grounds for appeal raised by the Plaintiff 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 Plaintiff 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

⁴ (2016) 37 ILJ 1485 (LC) at para 3.

⁵ 2013 (6) SA 520 (SCA) at para 24.

re-argument or an opportunity to re-open what has already been finally 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 dismissals for operational reasons (retrenchment) and pleadings. 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 Plaintiff 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] The Plaintiff contends *inter alia* that a plaintiff challenging an operational requirement need only plead the causa of the unfairness and that the detail and texture of the challenge are left to evidence and argument. The statement of claim constituted sufficient *facta probanda* because the Plaintiff pertinently challenged the existence of a technological, economic, structural or similar need of the Defendant. The aforesaid submission conflates two distinct categories of allegations.
- [15] It is one thing to deny that an operational need for retrenchment existed, but pursuing a specific factual thesis that the employees' existing contracts already conferred sufficient scheduling and multi-skilling flexibility, that no new contracts were operationally necessary and that the retrenchment was a mere 're-papering exercise' is an entirely different thing. The latter is not the detail of the former, but rather a highly specific contention, resting on its own factual foundation, which was never pleaded.
- [16] The same reasoning applies to the Plaintiff's other submissions. The pleaded challenges were confined to certain allegations, which placed them within the confined space of a pleaded case, yet the case pursued at trial and in argument advanced a specific factual thesis never foreshadowed in the statement of claim. The distinct factual and legal contentions required explicit pleading.

[17] The Plaintiff submitted that as it bore no onus, it was entitled to hold the Defendant to the four corners of its own pleaded case. The premise is correct, but there is a distinction between testing the Defendant's pleaded version, which the Plaintiff was entitled to do, and constructing an entirely new case from fragments of the Defendant's pleading, without considering the entire context and the defense in its totality.

[18] In *SA Breweries (Pty) Ltd v Louw*⁶, the LAC made it clear that:

....When, such as in the typical retrenchment case, there are a potential plethora of facts, issues and sub-issues, by the time the pre-trial conference is convened, counsel for the respective litigants have to make choices about the ground upon which they want to contest the case. There is no room for any sleight of hand, or clever nuanced or contorted interpretations of the terms of the minute or of the pleadings to sneak back in what has been excluded by the terms of a minute. The trimmed down issues alone may be legitimately advanced. Necessarily, therefore, the strategic choices made in a pre-trial conference need to be carefully thought through, seriously made, and scrupulously adhered to. It is not open to a court to undo the laces of the strait-jacket into which the litigants have confined themselves.

[19] The Constitutional Court in *South African Transport and Allied Workers Union and another v Garvas and others*⁷, held that:

'Holding parties to pleadings is not pedantry. It is an integral part of the principle of legal certainty which is an element of the rule of law, one of the values on which our Constitution is founded. Every party contemplating a constitutional challenge should know the requirements it needs to satisfy and every other party likely to be affected by the relief sought must know precisely the case it is expected to meet.'

Order

I therefore make the following order:

1. Leave to appeal is dismissed with no order as to costs.

Connie Prinsloo

Judge of the Labour Court of South Africa

⁶ (2018) 39 ILJ 189 (LAC) at para 8.

⁷ 2013 (1) SA 83 (CC) para 114.