



Not reportable

**IN THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

Case no: C 295/24

In the matter between:

ABRAHAM SWARTS

Applicant

and

**SAFETY AND SECURITY SECTORAL
BARGAINING COUNCIL**

First Respondent

MAUREEN DE BEER N.O.

Second Respondent

SA POLICE SERVICES

Third Respondent

Date of Judgment: 20 August 2026

APPLICATION FOR LEAVE TO APPEAL - JUDGMENT

- [1] The court dismissed the Applicant's application for condonation for the late filing of its review application on 23 July 2026. The Applicant now seeks leave to appeal against the judgement.
- [2] The Applicant's principal ground is that the court failed to exercise its judicial discretion properly when refusing condonation. He contends that the court did not assess all relevant factors cumulatively within the interests-of-justice enquiry, but gave insufficient weight to his explanation for the delay, the documentary evidence supporting it, his attempts to obtain legal assistance, the importance of the matter, and his prospects of success. He argues that another court could reasonably conclude that these factors justified condonation.
- [3] The Applicant challenges what he regards as a material factual error regarding his employment status. The judgement appears to have proceeded on the basis that he remained employed during the relevant period and could therefore have acted earlier, whereas he says he resigned from SAPS on 7 March 2022 and remained unemployed during the period relevant to the delay. He contends that this incorrect factual premise materially influenced the court's assessment of his explanation, diligence and ability to obtain legal assistance.
- [4] The Applicant argues that the court failed to properly assess his explanation for the delay and the challenges he faced in securing effective legal assistance, including his interactions with Workers Life Legal Insurance and his decision to proceed as a self-represented litigant. He claims the core issue was not merely having legal insurance but whether effective legal assistance was genuinely accessible to him. He further contends that the court should have considered the documentary evidence and circumstances together, rather than focusing solely on the delay itself.

- [5] The Applicant argues that the Court incorrectly assessed his prospects of success in the underlying section 145 review. He maintains that the Court focused too heavily on the employer's disciplinary process instead of considering whether the commissioner's arbitration award was reviewable under the proper *Gold Fields* reasonableness standard. Moreover, the Applicant relies on the cumulative effect of these matters. He contends that the incorrect employment-status finding, treatment of his explanation and attempts to obtain legal assistance, assessment of prospects of success, arbitration record, supplementary affidavit, procedural history and overall interests-of-justice enquiry collectively establish a reasonable prospect that another court would reach a different conclusion. Alternatively, he submits that these matters constitute compelling reasons under s 17(1)(a)(ii) of the Superior Courts Act for the appeal to be heard.
- [6] The application is opposed by the Third Respondent on the basis that the Applicant has not demonstrated reasonable prospects that another court would reach a different conclusion. It relies on the stringent test for leave to appeal and submits that an appeal is not automatic. In relation to condonation, the Third Respondent maintains that the review application was filed almost ten months late, that substantial portions of the delay remained unexplained or inadequately explained and that the court correctly found the explanation unsatisfactory.
- [7] The Third Respondent also argues that the Applicant's chances of success in the review were limited. It states that the Applicant only claimed the collective agreement was breached, his suspension was unfair and the arbitrator's reasoning was unreasonable, but failed to clearly show how these points indicated reviewable irregularities or strong prospects. Concerning the claimed factual mistake about the Applicant's employment status, the Third Respondent asserts that this does not prove the court's decision on condonation was incorrect.

[8] The Third Respondent argues that several of the Applicant's remaining grounds; including the alleged failure to consider the procedural context, alleged inconsistent application of condonation principles, failure properly to conduct the interests-of-justice enquiry and the alleged cumulative improper exercise of judicial discretion do not justify leave to appeal and need not be addressed individually.

[9] I have considered the parties' submissions.

[10] Section 17(1) of the Superior Courts Act 10 of 2013 provides:

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (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 the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[11] An applicant party seeking leave to appeal must persuade this court on material grounds that it has prospects of success on appeal and such prospects are not remote, but have a realistic chance of succeeding. Furthermore, the prospects of success must truly be reasonable.¹

[12] It is noted that the Applicant's reference to his unemployment status would not have made any difference to the court's decision. The Applicant presented various arguments regarding the reason for the lateness and all

¹ See MEC Health Eastern Cape v Mkhitha (2026) ZASCA

were considered in their totality. The court was not convinced that it was in the interests of justice to condone a delay of almost 10 months. Moreover, there exists no compelling reason for the appeal to be heard.

- [13] Having considered the judgement and the detailed submissions from both parties, the court is not persuaded that the Applicant's grounds for appeal warrant a decision that an appeal would have reasonable prospects of success.

Order

1. The application for leave to appeal is dismissed.
2. No order is made as to costs.



P Venter

Acting Judge of the Labour Court of South Africa

20 August 2026