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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1387/2018

In the matter between:

IMPERIAL COLD LOGISTICS (PTY) LTD

Applicant

and

FRANCIS TJALE N.O.

First Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

FOOD AND ALLIANCE WORKERS UNION

Third Respondent

RUBEN BUDA

Fourth Respondent

Considered: in Chambers

Delivered: This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be 18 August 2026.

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

PHAKEDI, AJIntroduction

- [1] This is an opposed application for leave to appeal against the judgment granted by this Court on 13 August 2025. The application was filed on 10 April 2026 outside the period prescribed in Rule 67 (2) of the Labour Court Rules¹ accompanied by a condonation application. The file was only brought to the attention of the judge on 21 May 2026.
- [2] In its application for condonation, the Applicant alleges that its legal representatives only became aware of the judgment on 10 March 2026 upon receipt of an email from the Fourth Respondent's legal representatives. The email was received from [t\[...\]](#) and it was directed to [t\[...\]](#) and she responded to the email on 23 March 2026.
- [3] It is recorded on the court file that the judgment was delivered electronically on 13 August 2025. This is supported by an email from the Labour Court Registrar on the same day at or around 12:51 addressed to the following recipients:
- [t\[...\]](#); [a\[...\]](#); [a\[...\]](#)
- Good day All
- Kindly find the attached hereto judgment in the above matter.
- Kindly share same with anyone who may be omitted from this e-mail.
- Kind regards'
- [4] This application was submitted seven and half months after the date of issuing of the judgment. The Fourth Respondent did not file opposing papers but filed his submissions resisting the application for leave to appeal.

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (Effective 17 July 2024).

Condonation application

- [5] As indicated above, the Applicant indicates that it only received the judgment on 23 and/or 26 March 2016 from its legal representative who only received it on 10 March 2026. The notice of leave to appeal was then served on 30 March 2026 but filed with the Registrar on 10 April 2026. The applicant alleges that the judgment does not stipulate how it was handed down and prior to 10 March 2026 its attorneys were not aware that it had been handed down as there was no communication from the Labour Court.
- [6] In terms of a period of delay, the Applicant alleges that the application was filed six days late from the date the judgment was received. In respect of prejudice, the Applicant stated that it would suffer prejudice if its condonation application is not granted taking into account the implications that the judgment will have on its operations if it were not to be overturned. In respect of prospects of success it was submitted that they are contained in the application for leave to appeal and this Court will then proceed to also deal with the application for leave to appeal.
- [7] On 24 June 2026 while considering an application for leave to appeal together with the application for condonation, this Court requested the Registrar to issue the following directive to the parties' legal representatives:

'Kindly note that the Judge is in the process of finalizing the judgment in the above-mentioned matter and I have been to send this directive to the parties:

1. The Applicant has filed its application for leave to appeal accompanied by an application for condonation for the late filing thereof. According to the explanation for the delay, the Applicant avers that it only gained knowledge of the judgment delivered on 13 August 2025 on 10 March 2026.

2. The Applicant's legal representative, Ms T Moyo is directed to submit an affidavit on or before Friday, 3 July 2026 confirming that she did not receive the judgment on 13 August 2025 as per the attached annexure.
3. The Respondent's legal representative, should s/he deem it necessary, is directed to file an affidavit in response to the affidavit mentioned-above on or before Friday, 10 July 2026.'

[8] Both legal representatives duly submitted their affidavits within the prescribed timeframes and the Court is appreciative of their assistance.

Explanatory affidavit by Thandi Moyo

[9] Ms Moyo submitted that the email was indeed received by her colleague Mr Arend Poshuma on 13 August 2025 and he confirmed that she was copied in the said email. However, according to her long explanation, the said email never reached her attention and it may have been deleted from her cell phone.

Explanatory affidavit by Ms Tendayi Mudenda

[10] Mr Mudenda submitted that the judgment did not come to his attention prior to 10 March 2026. The email address '[a\[...\]](#)' was an incorrect email address of the Counsel who appeared for the Fourth Respondent at the hearing of the matter. His correct email address is '[a\[...\]](#)'. The Fourth Respondent only learned later that the judgment had been delivered electronically to the parties and the Applicant's legal representatives had received it and no steps were taken to prosecute the leave to appeal application.

[11] It was further submitted that the decision of the Fourth Respondent not to oppose the condonation application was based on the *bona fide* but mistaken understanding that neither party had received the judgment on 13 August 2025. The explanation provided in the email is in direct conflict of the admission by Ms Moyo that indeed her office received the judgment on 13 August 2025 and her colleague, Mr Posthuma does confirm receipt thereof.

Evaluation and analysis

- [12] It is trite that in granting condonation, the Court exercises a discretion. The Labour Appeal Court may only interfere with the exercise of this discretion if it is found that in exercising its discretionary powers, the Court acted capriciously, upon wrong principles, in a biased manner, for insubstantial reasons, or committed a misdirection, or an irregularity or exercised its discretion improperly or unfairly.²
- [13] The application for condonation rests on an incorrect and unfortunate belief that the judgement was only brought to the attention of the Applicant's legal representatives on 10 March 2026. Ms Moyo confirmed in an affidavit that she was indeed copied in the email when the judgement was delivered on 13 August 2025. The explanation provided in her affidavit regarding why she did not pay attention to the email sent to her demonstrates that the explanation for the delay provided in the condonation application does not take the court into confidence regarding what truly led to the application not being filed within the prescribed timeframes.
- [14] The Applicant only seeks to provide an explanation for a period of delay from 10 March 2026 when Ms Moyo received the judgment from the Fourth Respondent's legal representatives. This is insufficient and more is required. It is trite that condonation is not merely there for the taking and the Court cannot exercise a discretion in a vacuum.
- [15] The Labour Appeal Court (LAC) has endorsed with approval what was stated in *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd and Others*³, that the applicant must "*at least, furnish an explanation of his default sufficiently full to enable the court to understand how it really came about and to assess his conduct and motives... Where there has been a long delay, the court*

² See: *Coates Brothers Ltd v Shanker and Others* (2003) 24 ILJ 2284 (LAC) at para 5.

³ 2000 (3) SA 87 (W) at para 12.

should require the party in default to satisfy the court that the relief sought should be granted".⁴

[16] The LAC in *SACCAWU obo Letsoalo and Another v Commission for Conciliation, Mediation and Arbitration and Others*⁵ held that:

[18] It is well accepted that condonation cannot be had for the mere asking but a plea for the court's indulgence to excuse the non-compliance with the prerequisite time limits in terms of the prescripts on sufficient cause shown. The yardstick is the interest of justice which entails a consideration of all the relevant factors, including the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. Ultimately, the particular circumstances of each case will determine which of these factors are relevant.

[19] Added to the general principles, in *Steenkamp and Others v Edcon Ltd*, the Constitutional Court endorsed the Labour Law-specific factors and considerations which are premised on one of the primary objects of the LRA to have labour disputes resolved expeditiously. Since labour disputes are inherently urgent, the LRA imposes strict time limits within which various applications and referrals must be launched to give effect to the primary object of the LRA. As a result, and pertinent to the case at hand, condonation in a case of disputes over individual dismissals will not readily be granted unless, inter alia, the explanation for non-compliance is compelling...'

[17] The Constitutional Court in *Booi v Amathole District Municipality and Others*⁶, stressed that condonation is not merely there for the taking. The Court confirmed that condonation should be granted if it is in the interests of justice to do so, which has to be determined by reference to all relevant factors including the nature of the relief sought, the extent and cause of the delay, the effect on

⁴ See also: *Aspen Holdings Pty Ltd and Another v Phelane and Another (Aspen Holdings)* [2025] 4 BLLR 409 (LAC) at para 14.

⁵ (JA 155/23) [2025] ZALAC 12 (30 January 2025) at paras 18 and 19.

⁶ [2022] 1 BLLR 1 (CC) at para 27.

the administration of justice, prejudice and the reasonableness of the explanation for the delay.

The application for leave to appeal

- [18] This court does not intend to deal with each of the grounds of appeal raised by the applicant and this should not be construed to mean that such grounds were not considered. The Applicant alleges that this Court failed to take into account that the review application was ripe for hearing on or during December 2018, it made constant follow ups from 16 November 2020 to date of filing of the record, and reconstruction of the was requested by it on 11 February 2021 before the letter of 8 March 2021 from the Respondent. The Court failed to take into account the fact that between 2021 and 2022 the court file went missing and there was another follow up with the CCMA on 22 November 2022.
- [19] The Applicant further submitted that this Court failed to exercise any discretion to determine the issue of backpay payable to the Fourth Respondent had the matter been finalized in 2019. In sum, the Court erred in making a finding that was excessive and punitive resulting in an irregular exercise of its discretion. In the result, another Court may come to a different conclusion taking into account the complex issues of law, the importance of the judgement to the conduct of law and the consequences to the Applicant.
- [20] The Fourth Respondent submitted that this application is nothing but an attempt by the Applicant to re-argue the matter which has been brought to finality. The Respondent argued that the argument presented in the leave to appeal was considered by the Court in its judgement and the desire that it ought to have been weighed differently does not meet the stringent threshold prescribed for the granting of applications for leave to appeal.

The legal framework for leave to appeal

[21] Section 16 (2) (a) of Superior Courts Act⁷ (the Act) deals with appeals in general and states:

- ‘(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone;
- (ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.’

[22] Applications for leave to appeal are regulated in terms of section 17(1) of the Act which provides:

‘17 Leave to appeal

- (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.’

[23] The above-mentioned section also applies to applications for leave to appeal filed in the Labour Court as envisaged in section 151 (2) of the Labour Relations Act⁸ (LRA).

⁷ Act 10 of 2013.

[24] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and another*⁹ the Supreme Court of Appeal said the following

[16] 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 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.

[17] 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.'

[25] The Labour Appeal Court (LAC) in *Martin and East (Pty) Ltd v National Union of Mineworkers and others*¹⁰ emphasised that this court ought to be cautious when leave to appeal is granted, as should the LAC when petitions are granted taking into account that the LRA was designed to ensure an expeditious resolution of labour disputes. The statutory imperative 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.

[26] In *Fairtrade Tobacco Association v President of the Republic of South Africa*¹¹ the full Court held that:

"As such, in considering the application for leave to appeal, it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before

⁸ Act 66 of 1995, as amended. This section provides that '*the Labour Court is a superior court that has authority inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a Division of the High Court of South Africa has in relation to the matters under its jurisdiction.*'

⁹ (1221/2015) [2016] ZASCA 176 (25 November 2016) at paras 16 and 17.

¹⁰ (2014) 35 ILJ 2399 (LAC) at p 16.

¹¹ (21688/2020) [2020] ZAGPPHC 311 (24 July 2020) at para 6.

leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on both facts and law.”

- [27] In *S v S and Another*¹² the Constitutional Court confirmed that the threshold for granting applications for leave to appeal is deliberately more stringent. The word “would” in section 17(1)(a) imposes a higher bar than “might”: it requires a realistic and not merely remote prospect that another court would in fact reach a different conclusion. Mere disagreement with the reasoning of the court a *quo*, or the fact that the issues are arguable, does not suffice. Something more is required in order for the leave to appeal to be granted.
- [28] The application for leave to appeal brought by the Applicant rests on a glaring disagreement with the reasoning of this court and does not present anything more than a regurgitation of the issues which were duly considered by this Court and dealt with in detail in its judgment.
- [29] Finally, the allegations that this Court failed to exercise its discretion on the issue of backpay payable to the Fourth Respondent in terms of the arbitration award are baseless and unfounded. This Court was not ceased with the dispute concerning the fairness of a dismissal¹³. The issue before the court was about non-compliance with the provisions of the Practice Manual of the Labour Court.¹⁴
- [30] Turning to the grounds for appeal, the Court is not persuaded that this matter should be kept on the roll indefinitely. The remainder of the grounds advanced for leave to appeal do not advance this matter anywhere as the application

¹² 2019 (6) SA 1 CC at para 30

¹³ There is a discretion to award the remedies contained in section 193 of the LRA which provides that:

‘(1) If the Labour Court or an arbitrator appointed in terms of this Act finds that a dismissal is unfair, the Court or the arbitrator may —

(a) order the employer to reinstate the employee from any date not earlier than the date of dismissal;
(b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or

(c) order the employer to pay compensation to the employee.’

¹⁴ Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

does not raise any novel points of law which require the intervention and attention of the LAC.

[31] The Court does not believe that it is in the interests of justice to grant the application for condonation. After careful consideration of the grounds for leave to appeal submitted by the applicant in this matter, this Court is not persuaded that the application for leave to appeal should be granted.

[32] Accordingly, the following order is made:

Order

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

G. C. Phakedi

Acting Judge of the Labour Court of South Africa