



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1212/2019

In the matter between:

NOMALUNGELO G. WOLF

Applicant

and

STATE INFORMATION TECHNOLOGY AGENCY

First Respondent

(SOC) LTD

WILLEM KOEKEMOER N.O

Second Respondent

THE COMMISSION FOR CONCILIATION, MEDIATION

Third Respondent

AND ARBITRATION

Heard: In chamber

Delivered: 21 August 2026

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAHOMED, AJ

Introduction

- [1] This is an application for leave to appeal to the Labour Appeal Court against the whole of the order and the reasons handed down by this Court on 13 March 2025 (the main judgment), in terms of which the applicant's application for the re-enrolment of her review application was dismissed, with no order as to costs; the respondent's opposition to that application was likewise not awarded any costs; and the respondent's attorneys and counsel were directed to show cause to the Taxing Master, when preparing their bill of costs, why they were entitled to charge a fee for their appearance at that hearing.
- [2] The respondent opposes the granting of leave, but does not seek a costs order against the applicant in the event that leave is refused
- [3] The applicant's grounds of appeal, in summary, are that this Court erred:
- 3.1 in finding that the applicant had failed to demonstrate a reasonable and acceptable explanation for the delay in complying with the orders of (Van Niekerk J) and Orton AJ;
 - 3.2 in finding that the applicant had failed to demonstrate actual, effective and substantial compliance with those orders;
 - 3.3 in declining to find that the application for condonation, though raised only in reply, cured any procedural irregularity once the point had been fully ventilated in argument;
 - 3.4 in failing to accord sufficient weight to the applicant's prospects of success on the merits of the review, in particular the alleged inconsistency and disproportionate severity of the sanction of dismissal; and
 - 3.5 in failing to accord sufficient weight, in the exercise of its discretion, to the applicant's personal circumstances.

The test for leave to appeal

- [4] Section 166(1) of the Labour Relations Act¹ (the LRA) permits an appeal against a final judgment or order of this Court to the Labour Appeal Court, with the leave of this Court or, failing such leave, the leave of the Labour Appeal Court itself.²
- [5] Rule 30 of the Rules for the Conduct of Proceedings in the Labour Court, read with section 17(1) of the Superior Courts Act 10 of 2013 prescribes the test to be applied³.
- [6] Section 17(1)(a) of the Superior Courts Act provides 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 that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [7] The threshold introduced by section 17(1) is a higher one than that which applied under the previous dispensation. In *Mont Chevaux Trust (IT 2012/28) v Goosen*⁴, it was held that the use of the word “would” in section 17(1)(a)(i), in place of the previous formulation requiring only that the court consider whether there was a reasonable prospect that another court “might” come to a different conclusion, signals a more stringent test, requiring a sound, rational basis for the conclusion that there are prospects of success on appeal.
- [8] This approach was endorsed by the Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha*⁵, in which it was held that a mere possibility of success, an arguable case, or one that is not hopeless, is not enough; there must be a sound, rational basis for concluding that there are reasonable prospects of success. Similarly, in *Notshokovu v S*⁶ the Court held that an appellant faces a higher and more stringent threshold under the current Act,

¹ Act 66 of 1995, as amended.

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

³ *Kruger v University of South Africa* (Application for Leave to Appeal) (JS207/19) [2026] ZALCJHB 48 (24 February 2026) at para 5.

⁴ 2014 JDR 2325 (LCC) at para 6.

⁵ (1221/2015) [2016] ZASCA 176 (25 November 2016).

⁶ (157/15) [2016] ZASCA 112 (7 September 2016).

and that it is not every possibility, or each and every basis upon which another court might conceivably arrive at a different conclusion, that will suffice.

[9] It is against this test that I consider each of the applicants' grounds.

Evaluation

[10] As to grounds (a) and (b): these grounds do not, in substance, identify any error, but rather invite this Court to reconsider factual findings which were, in the main, either common cause or established on the applicant's own papers. It is common cause that no arbitration hearing took place on 1 March 2018; it is common cause that the record of the hearing of 8 June 2018 was filed some seven months late without any application for condonation; and it is common cause that the re-enrolment application itself was filed some seven days after the deadline fixed by Orton AJ, again without any application for condonation in the founding papers. There is no sound, rational basis to conclude that another court would, on this record, arrive at a different conclusion on the question of compliance.

[11] As to ground (c): it is trite that an applicant must make out its case, including any case for condonation, in its founding affidavit, and stand or fall by that affidavit; new matter, including an application for condonation, may not be introduced for the first time in reply⁷. This is not a mere technicality capable of being cured by argument from the bar; it goes to whether the respondent had a proper opportunity to meet the case made against it. I am not persuaded that there is a reasonable prospect that another court would find otherwise.

[12] As to ground (d): the prospects of success on review were considered in the main judgment, notwithstanding that the application fell to be dismissed on the ground of non-compliance. This accords with the well-established approach to condonation: prospects of success are one of several interrelated factors to be weighed, together with the degree of lateness, the explanation for the delay, and the interests of justice, but where the explanation for non-compliance is wholly unsatisfactory, or absent, prospects of success cannot

⁷ *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A).

save an applicant.⁸ Having regard to the repeated and largely unexplained non-compliance with two separate court orders, I do not consider that there is a reasonable prospect that another court would find that the applicant's prospects on review, whatever their intrinsic merit, ought to have altered the outcome.

- [13] As to ground (e): the applicant's personal circumstances were expressly taken into account in the main judgment, in particular in the exercise of the discretion not to award costs against her. Those circumstances do not bear on the separate and logically prior question of whether the applicant complied, or showed adequate cause for not complying, with the orders of (Van Niekerk J) and Orton AJ. No misdirection has been shown.
- [14] Finally, the applicant has not identified any conflicting judgments, nor any other compelling reason, within the meaning of section 17(1)(a)(ii) of the Superior Courts Act, why the appeal should be heard notwithstanding the absence of reasonable prospects of success.
- [15] I am accordingly not satisfied that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why it should be heard. The application for leave to appeal falls to be refused.

Costs

- [16] The respondent does not seek costs in the event that leave is refused, and I see no reason, having regard to the considerations already traversed in the main judgment concerning the applicant's personal circumstances, and to the requirements of law and fairness in terms of section 162 of the LRA, to make any order as to costs.
- [17] In the result, the following order is made:

⁸ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) and *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC).

Order

1. The application for leave to appeal is refused.
2. There is no order as to costs.

N. Mahomed

Acting Judge of the Labour Court of South Africa