



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

Signature

20 August 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C472/2022

In the matter between:

KYLE JORDAN

Applicant

and

THE GENERAL PUBLIC SERVICE BARGAINING

COUNCIL

First Respondent

KHUDUGA TLALE NO

Second Respondent

THE OFFICE OF THE CHIEF JUSTICE

Third Respondent

Date of Hearing: In chambers

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date of handing down judgment is deemed to be 20 August 2026.

JUDGMENT

Introduction

- [1] In a judgment and order dated 30 March 2026, this court dismissed a review application brought by Mr Kyle Jordaan (Jordaan), in which he sought to challenge an award issued under the auspices of the General Public Service Sectoral Bargaining Council (the Bargaining Council), in case number GPBC159/2021, dismissing a constructive dismissal claim he had referred to the Bargaining Council. The present application seeks leave to appeal against the whole judgment and order.
- [2] The application is opposed by the Office of the Chief Justice (conveniently referred to as the respondent), which filed its submissions two days late and sought condonation. There was no opposition to the late filing, and the two-day delay is not excessive. Condonation will be granted so that both parties' cases are fully ventilated.

The test in applications for leave to appeal

- [3] Section 166 of the Labour Relations Act¹ provides for appeals against this court's judgments and orders.
- [4] As this court is a superior court, section 17(1) of the Superior Courts Act² (SCA), sets out the grounds on which leave to appeal may be granted. These include, *inter alia*, a reasonable prospect of success and a compelling reason for the appeal to be heard.
- [5] In considering whether to grant an application for leave to appeal, the court in *Smith v S*³, held that the court *a quo* assesses whether there is a reasonable prospect of success in the envisaged appeal, not whether the appeal itself would succeed. The court also stated this:

[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of

¹ Act 66 of 1995, as amended.

² Act 10 of 2013.

³ 2012 (1) SACR 576 (SCA) at para 3.

appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

Grounds of appeal

[6] Leave to appeal is sought on the ground that the court erred in the following respects:

- 6.1 In applying the reasonableness test rather than the correctness test, which applies when the review concerns a constructive dismissal matter.
- 6.2 In not finding that the respondent's unilateral decision to withhold Jordaan's salary constituted a material breach of the employment contract, as an employer has no right at common law or under the Basic Conditions of Employment Act⁴ to withhold remuneration without following a fair procedure and/or instituting disciplinary proceedings.
- 6.3 In independently assessing the reasons relied upon for the constructive dismissal, failing to take into account the respondent's cumulative conduct, which, viewed objectively from Jordaan's perspective, rendered continued employment intolerable. The conduct in question includes the persistent refusal to engage with Jordaan regarding his views that the return-to-office instruction was unlawful and unreasonable; allegations of insubordination, desertion, breach of contract and repeated threats of disciplinary action that were never instituted; Jordaan's exclusion from work communications and not being allocated work, culminating in the abrupt and unexplained withholding of salary without affording Jordaan an opportunity to make representations.

⁴ Act 75 of 1997, as amended.

- 6.4 In failing to find that the return-to-work instruction was unlawful and unreasonable, because it was not in compliance with Circular 15 of 2020 and the Disaster Management (DMA) Regulations.
- 6.5 In failing to find that Jordaan had an election to resign in the face of the respondent's fundamental breach of withholding his salary, and instead burdening him with resolving the salary issue.
- 6.6 In characterising Jordaan's remote working arrangement at the start of the national lockdown as one permitted by the respondent.
- 6.7 In misunderstanding Jordaan's interpretation of the 80/20 rotation rule.
- [7] It is submitted that Jordaan has reasonable prospects of success on appeal, and that the facts and the outcome of the case are of such substantial importance that the case is deserving of adjudication by the Labour Appeal Court.

Evaluation

- [8] Having considered all the grounds on which leave to appeal is sought, and approaching the matter with intellectual humility and integrity,⁵ I am of the view that the only ground on which the Labour Appeal Court (LAC) would reasonably reach a different conclusion is the correct interpretation of the DMA Regulations, which affects the lawfulness and reasonableness of the instruction to return to the office, and whether that instruction rendered continued employment intolerable for Jordaan. This is an issue of public importance on which the LAC should pronounce, and hence a compelling reason for granting leave to appeal. Therefore, leave to appeal will be granted, without limiting the appeal to the one ground referred to in this paragraph.

- [9] In the premises, I make the following order:

Order

⁵ *Shinga v the State and Another (Society of Advocates, Pietermaritzburg Bar, as Amicus Curiae) O'Connell and Others v the State* 2007 (4) SA 611 (CC) at para 53.

1. The respondent's late filing of the submissions in the application for leave to appeal is condoned.
2. Leave to appeal is granted
3. Costs are costs in the appeal.

T. Gandidze

Judge of the Labour Court of South Africa