



- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**

25 August 2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026 – 092263

In the matter between:

DEPARTMENT OF CORRECTIONAL SERVICES

Applicant

and

M E KGOWE

First Respondent

A W ZWANE

Second Respondent

I O BANDA

Third Respondent

POLICE AND PRISONS CIVIL RIGHTS UNION

Fourth Respondent

GENERAL PUBLIC SERVICE SECTOR

BARGAINING COUNCIL

Fifth Respondent

Decided: In Chambers

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Case Lines. The date and time for hand-down is deemed to be 25 August 2026

Summary: Leave to appeal – no proper grounds made out – application for leave to appeal dismissed

JUDGMENT – LEAVE TO APPEAL

SNYMAN, AJ

Introduction

- [1] In this instance, the applicant had brought a self-review application, as provided for in terms of Section 158(1)(h) of the Labour Relations Act (LRA)¹. It was brought on the basis of urgency by the applicant, in order to review and set aside a settlement agreement concluded between the applicant and the first, second and third respondents, in terms of which the unfair dismissal disputes pursued by these respondents to the fifth respondent as applicable bargaining council was settled. The applicant challenged the validity of this settlement agreement on a variety of grounds, all founded on the general principle of legality. The application was opposed by the individual respondents and the respondent trade union.
- [2] The application came before me on 9 June 2026, on which date I reserved judgment. In a written judgment handed down on 3 July 2026, I upheld the review application brought by the applicant, set aside the settlement agreement concluded between the applicant and the first, second and third respondents, also set aside the arbitration award under section 142A making the settlement agreement an arbitration award, and remitted the unfair dismissal disputes back to the fifth respondent for arbitration on the merits.
- [3] The first to fourth respondents (the respondents) were dissatisfied with the order and judgment against them, and filed an application for leave to appeal on 17 July 2026. The application for leave to appeal was opposed by the applicant. Written submissions as contemplated by Rule 67(5) were filed by the respondents on 27 July 2026, followed by the applicant's written submissions on 4 August 2026. The application for leave to appeal is thus ripe for determination.

¹ Act 66 of 1995 (as amended).

- [4] Rule 67(6) of the Labour Court Rules provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason to direct otherwise and will therefore determine the leave to appeal application by the respondents in chambers.

Analysis

- [5] Leave to appeal is not there for the asking. This is evident from section 17(1)(a) of the Superior Courts Act², which provides that: '*(a) Leave to appeal may only be given where the judge or judges concerned are of the opinion that: (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 a matter under consideration.*'
- [6] In *J & L Lining (Pty) Ltd v National Union of Metalworkers of SA and Others* (2)³ the Court summarized the legal position that applies when a litigant seeks leave to appeal from this Court, as follows:

'Leave to appeal is not there for the asking. When deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another court would come to a different conclusion to that of the court a quo, or in other words, whether the appeal would have a reasonable prospect of success. This was summarised in *SA Clothing & Textile Workers Union & others v Stephead Military Headwear CC*, as follows:

'It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal.'

- [7] As to the meaning of '*reasonable prospects of success*', this was dealt with in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*⁴ where the Court said:

² Act 10 of 2013.

³ (2019) 40 ILJ 1303 (LC) at para 5.

‘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.

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.’

- [8] Next, and as to what would constitute a compelling reason for another Court to entertain the appeal, the *Court in Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁵ had the following to say:

‘... A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. ...’

- [9] The application for leave to appeal is premised on a number of specific grounds. I do not intend to address all of them in detail, because much of what is said in the application for leave to appeal relate to issues already fully ventilated when the matter was originally argued. In this respect, I stand by what I have said in my original judgment. The mere disagreement by the respondents of the findings I had made, and contending such is wrong, does not constitute a proper basis for seeking leave to appeal, considering the tests

⁴ [2016] JOL 36940 (SCA) at paras 16 – 17. See also *Ramakatsa and Others v African National Congress and another* [2021] JOL 49993 (SCA) at para 10, where it was held: ‘*The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist ...*’.

⁵ 2020 (5) SA 35 (SCA) at para 2. See also *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* 2013 (3) SA 315 (SCA) at para 5; *Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others* 2016 (3) SA 317 (SCA) at para 23; *Tshwane City and Others v Nambiti Technologies (Pty) Ltd* 2016 (2) SA 494 (SCA) at para 6.

for leave to appeal set out earlier in this judgment. So, and even where I do not specifically address any issue raised in the respondents' application for leave to appeal in this judgment, it must be accepted that I have not been convinced that the respondents have made out a proper case for leave to appeal in line with the aforesaid tests.

[10] I will however deal with some of the issues raised in the respondents' leave to appeal application. The respondents contend that the settlement agreement in this case could not be reviewed and set aside, because it was made an arbitration award under section 142A of the LRA. This issue was specifically dealt with when the matter was originally argued before me. The respondents have added nothing in the application for leave to appeal different to what has already been said in this regard, and as dealt with in my judgment. I will suffice by reiterating that the purpose behind making a settlement agreement an arbitration award under section 142A is to facilitate execution thereof. It enables the beneficiary under the settlement agreement to invoke all the enforcement provisions under the LRA, such as execution by the Sheriff or contempt proceedings. It does not seek to elevate the settlement agreement to a level that makes it unassailable in the normal course, even where its validity is challenged. The purported 'interaction' between section 142A, 143, 145 and 158(1)(h) relied on the respondents as basis for establishing a case for leave to appeal is nothing but a red herring and designed to lend some substance to a ground for seeking leave to appeal which has no prospect of success.

[11] In my view, I consider the manner in which the applicant sought to address in its written submissions this case of the respondents to be quite apposite. The applicant explains it as follows. When the GPSSBC had before it a settlement agreement which recorded that the parties agreed it be made an arbitration award under section 142A(1), that in itself was the statutory basis for making it an arbitration award, without more. There can be no reviewable defect relating to anything the GPSSBC may do in then making the settlement agreement an arbitration award. In short, there is no basis to review this action. The reviewable defect complained of is antecedent the conclusion of the settlement agreement, and if the settlement agreement is set aside on review based on that defect, then there can be no basis for it to be made an

arbitration award, and the award is open to challenge on that very basis. I believe the applicant is quite correct, where it says: *'The Respondents' argument is consequently circular to the extent that it contends that the settlement could not be effectively set aside whilst the award remained extant, while the suggested basis for setting aside the award would itself depend upon first establishing the invalidity of the settlement ...'*. In my view, this is all really quite logical, and the respondents' wrangling to the contrary does not establish prospects of success on appeal.

[12] What the respondents further clearly miss, and which they are still unable to answer, is that the applicant did not just seek to review and set aside the settlement agreement, and that is that. The notice of motion applied a logical sequence. First, it was sought that the settlement agreement be set aside on the basis of legality. Then, if the settlement agreement was set aside, it was sought that the arbitration award under section 142A(1) be set aside, as the basis for such award had fallen away. And third, the GPSSBC was specifically joined as a party to the proceedings as a result of this relief sought. This surely illustrates that the respondents' case of some 'interaction' between various sections is nothing but contrived to bolster this application for leave to appeal, and has no merit.

[13] The respondents further contend that it was not permissible for the applicant to rely on section 158(1)(h), because it had other remedies available, and in this context, section 158(1)(h) should be narrowly construed to the extent that it should not be allowed where there are such other remedies. I do not consider there to be any merit in this contention. The respondents say that section 144 should have been used. How it is even possible, where it comes to a settlement agreement concluded with the participation of both parties, to be rescinded under section 144 is beyond me. And secondly, section 145, as also referred to by the respondents, applies to arbitration awards following a decision by an arbitrator. *In casu*, there is no such decision. And lastly, the respondents appear to be oblivious to everything I have said in my judgment where it comes to the entitlement of an organ of state to seek self-review where decisions by functionaries are made contrary to the principle of legality. In short, the applicant was always entitled to pursue a review under section

158(1)(h), which it did, and there is no prospect that another Court would come to a different conclusion in this regard.

- [14] In the end, let me try and explain it as simply as possible. Making the settlement agreement an arbitration award under section 142A, by agreement between the parties, is not a decision susceptible to review. It is an enforcement mechanism. What must always be attacked is the settlement agreement itself. This can only be done, in this case, considering the case is that it was unlawfully concluded, by way of section 158(1)(h). Only once this underlying settlement agreement is set aside, can the arbitration award under section 142A be set aside. That is exactly what the applicant was asking for. I believe all this is fairly trite, and there simply no prospects of success on appeal where it comes to this ground for seeking leave to appeal raised by the respondents.
- [15] Next, the respondents say that under section 142A(1), the GPSSBC exercises a discretion. But as specifically dealt with in my judgment already, this is simply not correct where the parties specifically agree to make the settlement agreement an arbitration award. The position may be different where there is no such agreement, and a party makes application to the GPSSBC to make the settlement agreement an arbitration award. But this is not what happened here. I am unconvinced that this ground for the respondents seeking leave to appeal has any substance.
- [16] The respondents' entire case for seeking leave to appeal where it comes to my findings relating to the meaning and import of Delegation 102 is nothing more than simply rehashing the same case already argued. The respondents obviously disagree with my reasoning and findings, but this, in terms of the leave to appeal test articulated above, is wholly insufficient to substantiate a case for leave to appeal. I am not going to repeat everything already said in this regard. I will suffice by saying that I am not convinced that there exists a reasonable prospect that another Court would come to a different conclusion.
- [17] The respondents contend that I erred in deciding the case as one of urgency and overlooking the delay. First and foremost, findings of urgency are not appealable. Findings of urgency are rulings that do not dispose of the substantive merits of a matter, and as such, are not appealable. In *Zweni v*

*Minister of Law and Order*⁶ the Court held, regarding a ruling that a matter is urgent: '*In the light of these tests and in view of the fact that a ruling is the antithesis of a judgment or order, it appears to me that, generally speaking, a non-appealable decision (ruling) is a decision which is not final (because the Court of first instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. ...*'. The same sentiments were expressed in *Ball v Bambalela Bolts (Pty) Ltd and Another*⁷, as follows: '*At the hearing before us the appellant did not persist with the ground that the court a quo erred in ruling that the matter was not urgent. In the circumstances, I need not say much on the point, save for restating that, generally, rulings on urgency, by themselves, are not appealable, because they are not final and definitive of the rights of the parties.*' And finally, in *Altron TMT (Pty) Ltd v City of Tshwane Metropolitan Municipality and Another*⁸ the Court said:

'... An order in terms of rule 6(12) that a matter should be heard as a matter of urgency is not final nor definitive of the rights of the parties nor does it have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. An order, in terms of rule 6(12), is no more than an order directing how a matter should proceed. The procedural character of a decision on urgency has been repeatedly held to be non-appealable.'

[18] Where it comes to the issue of overlooking the delay, I dealt with this in detail my judgment, with reference to all leading and comparable authorities, which the respondents have simply been unable to assail. Again, this ground for seeking leave to appeal is nothing but a disagreement with my findings and reasoning, and as said, it does not establish a case for leave to appeal. I will not repeat what I have already said.

[19] The respondents also take aim at the relief afforded once the settlement agreement is set aside. The respondents' complaint is that even if the settlement was unlawfully concluded, I had failed to craft just and equitable

⁶ 1993 (1) SA 523 (A) at 536A-C. See also *Lubambo v Presbyterian Church of Africa* 1994 (3) SA 241 (SE) at 242G-I. See also *Nelson Mandela Bay Municipality and another v Van Niekerk and others (Leave to Appeal)* 2022 JDR 3412 (ECP) page 4; *Siyakhulisa Trading Enterprise (Pty) Ltd v Glencore Operations South Africa (Pty) Ltd and Another* 2023 JDR 4522 (GJ) at para 7; *Alfred Nzo District Municipality v Sokhani Development and Consulting Engineers (Pty) Ltd* 2024 JDR 2636 (ECMA) at para 3.

⁷ (2013) 34 ILJ 2821 (LAC) at para 32.

⁸ 2024 JDR 0092 (GP) at para 24.

relief. But the respondents are unable to suggest what this relief would be. Looking at it logically, if it is true that the settlement agreement was unlawfully concluded, then surely it must be set aside. The benefits under the settlement agreement, which is what the respondents appear to suggest should somehow be maintained, cannot still apply if there is no settlement agreement. And once there is no settlement agreement, then the unfair dismissal disputes remain extant and uncompromised. How these disputes are then finally determined is by way of arbitration, as prescribed by law. That is the relief I crafted. That is surely straight forward, and a matter of common sense. If the individual respondents ultimately win their case, and obtain fully retrospective reinstatement which is competent relief that can be granted, any prejudice to them would be fully ameliorated. I have a wide discretion where it comes to affording consequential relief in the case of a review application succeeding. This discretion can only be interfered with if the respondents can show, as said in *Coates Brothers Ltd v Shanker and Other*⁹, the following:

‘An appellant must show, in an appeal from a decision in a lower court, that the court a quo ‘acted capriciously, or acted upon a wrong principle, or in a biased manner, or for insubstantial reasons, or committed a misdirection or an irregularity, or exercised its discretion improperly or unfairly ...’

I am unconvinced that the respondents made out any such case. They propagate different solutions, but that falls far short of establishing a legitimate basis to interfere with my aforesaid discretion.

[20] I am therefore not convinced that leave to appeal is justified in this case. The respondents have not advanced a cogent and substantiated basis upon which it can be said that they enjoy reasonable prospects of success on appeal. In fact, I believe prospects of success on appeal are slim to none. There is also no pressing issue of public interest that would call for consideration by a Higher Court. This matter actually cries out for immediate finality. A further delay caused by a pending appeal is simply not appropriate, and the appropriate avenue is for this matter to proceed to arbitration, where it can be finally decided as prescribed by the LRA, in a short space of time. In this

⁹ (2003) 24 ILJ 2284 (LAC) at para 5. See also *Chetty v Baker McKenzie* (2022) 43 ILJ 1599 (LAC) at para 7

respect, I find guidance in the judgment of *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*¹⁰ where the Court decided:

‘This was a case which should have ended in the Labour Court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law, that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.’

[21] This only leaves the issue of costs in the application for leave to appeal. I have a wide discretion where it comes to the issue of costs, by virtue of the provisions of section 162(1) of the LRA. On the basis of the same reasoning as found in my original judgment, I consider no order as to costs as being fair and appropriate.

[22] For all the reasons as set out above, the following order is made:

Order

1. The first, second, third and fourth respondents’ application for leave to appeal is dismissed.
2. There is no order as to costs.

S. Snyma

Acting Judge of the Labour Court of South Africa

¹⁰ (2014) 35 ILJ 2399 (LAC) at 2406B-F.