



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR2001/23

In the matter between:

TUV SUD PRO TEC (PTY) LTD

Applicant

and

NUMSA OBO MAHLOBO SS

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

COMMISSIONER MAGAELE ALFRED MASHEGO N.O.

Third Respondent

Heard: In Chambers

Delivered: 24 August 2026

JUDGMENT – LEAVE TO APPEAL

MKWIBISO, AJ

Introduction

[1] On 27 June 2025, I handed down an *ex-tempore* judgment dismissing the applicant's review application. The said review application sought to have a rescission ruling by the third respondent reviewed and set aside. The

rescission ruling had dismissed an application for rescission of a default award, which had been rendered in circumstances where the third respondent had refused to postpone an arbitration hearing despite the applicant having produced a medical certificate showing that its representative was ill.

- [2] The applicant seeks to appeal against the decision dismissing its review application. It seems the transcript of my *ex-tempore* judgment was received in September 2025 and the leave to appeal was filed in October 2025. I am not aware of the application for leave to appeal being opposed by the first respondent.

Relevant facts and evidence

- [3] The first respondent (Mr Mahlobo) had been dismissed by the applicant for misconduct. Mr Mahlobo had referred an unfair dismissal dispute to the second respondent (the CCMA).
- [4] The transcript of the arbitration proceedings reveals the following. The CCMA scheduled the matter for con/arb on 26 June 2023 at 1pm. Twenty minutes before the hearing, the applicant sent an email to the CCMA advising that its representative, Mr Mahlangu, was ill and could not attend the hearing. A medical certificate was attached to that email and a postponement was requested as a result.
- [5] The employer had sent Mr Kok to the hearing for purposes of requesting a postponement and he introduced himself as “just an HR Recruiter”.
- [6] The Commissioner refused to postpone the hearing and Mr Kok excused himself, after which the hearing proceeded in the absence of the applicant.
- [7] The Commissioner rendered an award in favour of Mr Mahlangu, ordering that his dismissal was substantively unfair and that he should be reinstated by the applicant with full retrospective effect from the date of dismissal. The applicant contends that the decision to not postpone the arbitration in light of its representative's illness meant that the default award was made erroneously in

its absence as envisaged in section 144(a) of the Labour Relations Act 66 of 1995 (the LRA).

[8] The applicant contends that I erred by not upholding its review application.

Analysis

[9] The test for granting leave to appeal is contained in section 17 of the Superior Courts Act 10 of 2013. Section 17(1)(a) provides that:

“(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 judgements on the matter under consideration”.

[10] In *Seatlholo and Others v CEPPWAWU*,¹ the Court made it clear that the new test for leave to appeal was higher than it used to be:

“[3] The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a

¹ *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others* (2016) 37 ILJ 1485 (LC).

test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes 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 (See the judgment by Davis JA in *Martin & East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning & another* (C 536/15, 6 November 2015)” (emphasis added).

- [11] Subsequent to the judgment of 27 June 2025 in this current matter, the Labour Appeal Court has handed down a judgment dealing with similar facts in *Mobile Telephone Networks (Pty) Ltd v CCMA And Others*.² The employer’s appointed representative in that matter had fallen ill and was hospitalised the afternoon before the arbitration hearing and a medical certificate was submitted by the employer at the arbitration hearing when a request for postponement was made. The employer’s representative had excused himself immediately after the Commissioner’s decision to refuse a postponement in that case. Under these circumstances, the Labour Appeal Court held that the Commissioner should have granted the postponement and the court *a quo* had erred by not reviewing and setting aside the Commissioner’s decision to not do so. In reaching this conclusion, the Labour Appeal Court made the following statements:

“[11] In *National Police Services Union and Others v Minister of Safety and Security and Others*¹ the Constitutional Court affirmed that parties to a dispute do not have a right to a postponement, and that the court retains a discretion on whether or not to grant a postponement. That discretion is to be

² *Mobile Telephone Networks (Pty) Ltd v CCMA and Others* (2026) 47 ILJ 1081 (LAC).

exercised by reference to whether the applicant shows good cause for the postponement to be granted, whether it is in the interests of justice that the postponement be granted, and a consideration of all relevant factors. The requirement for good cause entails the furnishing of a full and satisfactory explanation of all the relevant circumstances. The interests of justice require a balance of any genuine need for more time, against the need to finalise the matter without further delay. Relevant factors include whether the application was timeously made, the extent of any prejudice to any of the parties, and whether the application is opposed.

- [12] In the present instance, it was not in dispute that Lotter's illness and subsequent hospitalisation were sudden, could not have been predicted, and posed a danger to others in the context of the prevailing Covid 19 pandemic. Further, the authenticity of the medical certificate submitted on Lotter's behalf was not in dispute. Neither the appellant nor the employers' organisation acting on its behalf could have foreseen that Lotter would fall ill on the hearing date, to the extent that he would be hospitalised. It follows that neither could have foreseen any need to make any prior or contingency arrangement to replace Lotter.

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- [14] The commissioner's ruling makes no attempt to balance the interests of the parties. The appellant manifestly satisfied the requirement of good cause, having proffered a full and satisfactory explanation for its absence. The ruling comprises little more than a one-sided castigation of the appellant. Had the commissioner dismounted his high horse and reflected on the facts and the manifest prejudice that would be caused to the appellant were the postponement to be refused, a different outcome would have resulted. The commissioner failed to appreciate that the appellant was of right, entitled to

representation by an employers' organisation and by a person sufficiently well-versed in the dispute. The time period within which the commissioner expected the appellant to replace Lotter was simply unrealistic. This is particularly so where the standard form for the referral of disputes for arbitration contains little if anything in the way of facts and conclusions of law on which the referring party intends to rely. There is no record of any pleaded case, or pre-trial minute that might have assisted a seasoned practitioner quickly to discern the case to be met. The commissioner's assumption that standing the matter down from 9:00 to 12:00 provided an alternative representative with sufficient time both to acquaint him or herself with the matter and prepare for an arbitration hearing, is simply not tenable".

- [12] Based on this judgment by the Labour Appeal Court, there are reasonable prospects that a higher court would find that the applicant's request for postponement ought to have been granted due to the sudden nature of the employer's representative's illness and inability to attend to the arbitration on 26 June 2023. The applicant's application for leave to appeal ought to be granted as a result, in the interests of justice.

Costs

- [13] There is no basis to make a costs order in this matter.

- [14] In the premises, the following order is made:

Order

1. The applicant is granted leave to appeal to the Labour Appeal Court.
 2. There is no order as to costs.
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VG Mkwibiso

Acting Judge of the Labour Court of South Africa

LABOUR COURT