



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1843/23

KENNETH SKHOSANA

Applicant

and

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

First Respondent

FREDDY BALOYI

Second Respondent

ESKOM HOLDINGS SOC LTD

Third Respondent

HEARD: IN CHAMBERS

DELIVERED: 27 August 2026

JUDGMENT – LEAVE TO APPEAL

MOGANE, AJ

Introduction

[1] This is an application brought for leave to appeal.

[2] The applicant seeks to appeal the whole judgment and order which was issued by this court.

[3] The whole judgment and order of this court reads thus:

- a) *The application to have the second respondent's award reviewed and set aside is dismissed.*
- b) *There is no order as to costs.*

The Labour Court rules pertaining to an application for leave to appeal

[4] Rule 67 of the Labour Court rules states thus:

1. *"An application for leave to appeal from the Labour Court to the Labour Appeal Court may be made by way of a statement of case of the grounds for leave at the time of the judgment or order.*
2. *If an application for leave to appeal has not been made at the time of the judgment or order, an application for leave to appeal must be filed with the registrar, responsible for appeals and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought. The court may, on good cause, extend that period...*
3. *A copy of an application for leave to appeal must be served on the other parties to the proceedings. The application may be delivered and served in any manner in which the matter is heard.*
4. *Within 10 days of the filing of the application for leave to appeal, the party seeking leave may file submissions in support of the application for leave and any party opposing the application for leave to appeal may file its opposing submissions within 5 days thereafter.*
5. *An application for leave to appeal will be decided by a Judge in Chambers on the basis of submissions filed by the parties, unless the Judge directs that the court a quo application for leave be heard in open court."*

The applicable legal principles pertaining to an application for leave to appeal

[5] It is trite that the test in an application of this nature is that of a reasonable possibility that another court might come to a different conclusion other than

one reached by the court *a quo*. The test has been applied in various decisions of the courts¹. Therefore, what must be assessed is the question of a reasonable possibility that another court may come to a different conclusion other than one reached by the court in the order of 17 July 2026. The reasonable possibility that another court may come to a different conclusion must be assessed with reference to the facts and the law.

- [6] In *S v Smith*², Plasket AJA observed that *“what the test of reasonable prospects of success postulates is 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 order to succeed. Therefore, the appellant must show 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 than that there is a mere possibility of success on appeal, or that the case is arguable on appeal or that the case cannot be established as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success.”*
- [7] Furthermore, the applicable test was enunciated by the LAC in *NUMSA v Fibre Fain CC t/a Kango Canopies*³, *“Whether or not it can be said that, in exercising its discretion, the court a quo did so capriciously, or upon a wrong principle, or in a biased manner or for unsubstantiated reasons or misdirection or irregularity or wanted to exercise discretion or exercised that discretion improperly or unfairly.”*

Evaluation

- [8] In *Van Zyl Jacobs v Steyn Marianne*⁴, the court had this to say:

“A court of appeal would first had to consider if there are grounds to interfere with the exercise of my discretion. Once that hurdle is crossed, it could after my judgment if it believes the outcome is wrong, but only then the grounds for interfering with the

¹ See *Westling House Break and Equipment (Pty) Ltd v Bliger Engineering (Pty)Ltd* 1986 (2) SA 555 (A), where the court reiterated the general principle that in order for an applicant for leave to appeal to succeed, the applicant must demonstrate that it has reasonable prospects of success on appeal.

² (2012) 1 SACR 567 (SCA) at para 7.

³ (2000) 21 ILJ 1079 (LAC) at 1081IG-1082A.

⁴ [2002] ZAG PHC (3 way) at para 17.

exercise of my discretion are usually only where my discretion was not exercised judicially or where my decision was produced by wrong principles, or where my decision was affected by a misdirection of facts or where my decision could not reasonably have been reached by a court properly directing itself to the relevant facts and principles. The law in this regard is settled and needs no detailed discussion."

Failure to adhere to the rules of this court and in particular to the Practice Manual

[9] Cause 15.2 of the Practice Manual which provides as follows:

"Within 10 days of the filing of the application for leave to appeal, the party seeking leave must file submissions in terms of Rule 30(3A) and the party opposing leave to appeal must file its submissions five days thereafter. An application for leave to appeal will be decided by a Judge in chambers, unless the Judge directs that the application for leave be heard in open court."

[10] As per the practice and norm of this court, I have exercised my discretion in dealing this application for leave to appeal in chambers.⁵

[11] The applicant filed his application for leave to appeal on 27 July 2026. The applicant ought to have filed his written submissions by not later than 5 August 2026. The applicant has failed to do that and is thus non-compliant with the practice manual.

[12] Snyman AJ further held⁶: *"Considering that a Judge is entitled in terms of the Practice Manual, to decide a leave to appeal an application in chambers based on written submissions, the failure to file written submissions may in these instances may be viewed similar to a party fail to appear in court to argue the case, and all consequences associated with it, which may include dismissing the application on this basis but at the very list, this failure by the applicant leaves the leave to appeal application unmotivated."*

[13] On this basis alone, of failure to submit written submissions by the applicant, his application for leave to appeal ought to fail.

⁵ *Vuyokazi Ndebele v South African Police Service* (JR 2395/14).

⁶ *Ibid* at paras 7 and 8.

- [14] I have decided, despite his failure to file written submissions, to give the applicant the benefit of doubt.
- [15] The applicant's grounds are nothing other than regurgitating what he has already ventilated in his review application and by and large disagreeing with the conclusions I came to. I came to those conclusions having been guided by the law and facts applicable to the matter of constructive dismissal. The fact that the applicant disagrees with what I concluded does not in itself morph to establish a reasonable prospect that another court may come to a different conclusion. I have considered those grounds and have come to the conclusion that the applicant has failed to pass the standard which has been set, that another court may come to a different conclusion.
- [16] The applicant, then in his submissions for leave to appeal, goes to attack my integrity and make personal allegations against me. I do not want to veer into that, but where my integrity is being attacked, I have an obligation to respond thereto. The applicant, and this is guised as a ground for leave to appeal, makes allegations that I spoke to him and said that he is making things difficult for himself by complaining that my judgment was delivered late. And furthermore, that I was angry with him, hence my judgment.
- [17] Honesty, reliability and integrity are the cornerstone for this profession. I, when inducted to act, took an oath which I take seriously and honour it. It's a privilege to act in this court and I wish to state categorically that I have never spoken to the applicant at any stage, except when he appeared before me in the review court. Axiomatically, it follows that if I have not spoken to him, I therefore have not uttered those words he is accusing me of and therefore what he states in his papers is not true. I act without fear or favour and the fact that I made an adverse judgment against him cannot translate to an allegation that I was angry or is angry about him. I am not and I have never been. Enough about that, I just thought it should be responded to, as perceptions, if not challenged, might seem as facts.
- [18] In my judgment, I reasoned why this court cannot interfere with the ruling of the commissioner. I further went on and said in the event I am wrong on that,

then I looked at the prospects of success and in my analysis, I stipulated the reason the applicant was not constructively dismissed and thus failed to discharge that onus.

[19] This has been reinforced by the Constitutional Court in *Reynolds Maleka v ADT Security (Pty) Ltd*⁷. In our jurisprudence, we follow the stare decisis principle.

[20] It is thus my considered view that the applicant did not pass the muster. The applicant has failed to show reasonable prospects that another court may come to a different conclusion.

[21] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*⁸, Davis JA held thus:

“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 is no incorrect application of facts, in particular the assessment of actual justification for dismissals or alternative sanctions. It would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of dispute and 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, subject to appeal against the facts, namely the proper resolution of labour disputes.”

[22] As the matter was unopposed, I do not deem it necessary to issue a cost order. Law and fairness dictate that I do not.

[23] In the premises, I make the following order:

⁷ [2026] 47 ILJ 839 (CC); (2026) 5 BCLR 453 (CC); [2026] BLLR 519 (CC) (24 February 2024).

⁸ (2014) 35 ILJ 2399 (LAC) at 2406.

Order:

1. The applicant's application for leave to appeal is dismissed.
2. There is no order as to costs.

C. Mogane

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Self-represented

For the Third Respondent: Unrepresented

LABOUR COURT