

REPUBLIC OF SOUTH AFRICA



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case Number: JR 1733/23

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

07 September 2026

DATE

SIGNATURE

In the matter between:

VINCENT MASHININI

Applicant

and

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER DANIEL MOFEREFERE MAJARE
Respondent

Second

PHILIP MORRIS SOUTH AFRICA (PTY) LTD

Third Respondent

Neutral Citation: *Vincent Mashini v Commission for Conciliation, Mediation and Arbitration and 2 Others (JR 1733-2023) [2026] ZALCJHB----- (07 September 2026)*

Coram: Khaba AJ

Considered: In Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date of this order is deemed to be 07 September 2026.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and more stringent threshold – Leave to appeal refused.

JUDGMENT
[APPLICATION FOR LEAVE TO APPEAL]

KHABA, AJ:

Introduction:

[1] This is an application for leave to appeal against the judgment and order I delivered on 27 July 2026 ("the Judgment"), which dismissed the applicant's review application. The applicant, who appeared in person, now seeks leave to appeal to the Labour Appeal Court. The third respondent opposes the application.

[2] The applicant does not seek leave to appeal against the costs order, as there

was no order as to costs in the judgment. The applicant seeks leave to appeal

against the dismissal of the review application.

[3] The central question is whether the applicant has satisfied the threshold prescribed in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013. The section provides:

“(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 compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration....”

The applicant's grounds of appeal:

[4] The applicant advances numerous grounds of appeal in his application for leave to appeal and the submissions filed in support thereof. In essence, these grounds are a repetition of the arguments advanced in the review application and amount to a disagreement with the findings of the Judgment. They may be summarised as follows:

- a. The applicant contends that the court erred in its recording and findings of the factual background of the disciplinary hearing, as set out in paragraphs 6, 7, 8 and 9 of the Judgment. The applicant submits that the evidence before the second respondent and the record of the arbitration contradict the court's findings in several respects, including: the nature and scope of the investigations; the applicant's absences from the disciplinary hearing; the independence of the chairperson; the essence of the chairperson's findings; and the basis upon which the dismissal was effected.

- b. The applicant contends that the court erred in its recording and findings of the arbitration proceedings, as set out in paragraphs 10, 11, 12 and 26 of the Judgment. The applicant submits that the evidence before the second respondent and the record of the arbitration contradict the court's findings in several respects, including: the alleged corroboration of his version by his manager; the testimony of Mr. Sondlo, the tracker data and its accuracy; the in-store audits conducted by Mr. Sondlo, and the evidence of Ms. Baloyi.
- c. The applicant contends that the court erred in finding that his assertion that the third respondent failed to consult his union was not borne out by the evidence (paragraphs 16 and 19 of the Judgment). The applicant submits that he was a union official at the time disciplinary actions were taken against him, that Item 4 of Schedule 8 of the LRA required consultation with his union before disciplinary action was instituted, and that there was no evidence before the second respondent demonstrating that the third respondent had consulted with the union.
- d. The applicant contends that the court erred in finding that the chairperson of the disciplinary hearing was an external and independent appointee and that the applicant had failed to establish bias (paragraphs 19 and 24 of the Judgment). The applicant submits that he applied for the chairperson's recusal, and that she dismissed the application without furnishing reasons. The applicant further submits that the chairperson was a director of a company contracted by the third respondent to deal with his union, as evidenced by the terms of that contract.
- e. The applicant contends that the court erred in finding that his arguments were unsustainable, that he was required to furnish a medical certificate, that further delays were his fault, and that the third respondent's conduct was not punitive (paragraphs 15, 16, 17, and 18 of the Judgment). The applicant submits that Ms. Adolph and Mr.

Sondlo conceded under cross-examination that continuing the disciplinary hearing in his absence was not supported by any policy, code of conduct, or contract of employment. The applicant further submits that the letter dated 18 October 2022 was irrelevant to the disciplinary sitting of 03 November 2022, and that he was not required to furnish a medical certificate for his absence on that date.

- f. The applicant contends that the court erred in its findings concerning substantive fairness, as set out in paragraphs 20, 21, 22, 23 and 25 of the Judgment. The applicant submits that the court was wrong to conclude that his arguments were without substance, that the third respondent's evidence was thorough and internally consistent, that his ISMS captures were false, that his defence was improbable and unsubstantiated, and that the second respondent's findings were unimpeachable. The applicant further submits that he captured his ISMS calls within a cycle in accordance with a workplace rule, that his ISMS captures were not false, that the tracker device used to support his dismissal was inaccurate, and that he did not contravene any workplace rule.
- g. The applicant contends that the court correctly recorded that the charges against him were vague but erred by omitting to make a finding in this regard (paragraph 23 of the Judgment). The applicant submits that the second respondent likewise failed to rule on this aspect, notwithstanding the evidence adduced before him.
- h. The applicant contends that the court erred in its analysis of his testimony concerning the offence of "gross" dishonesty and "gross" misrepresentation (paragraphs 23 and 25 of the Judgment). The Applicant submits that the question posed to him regarding the seriousness of the allegations was general in nature and not specifically directed at the offences of "gross" dishonesty or gross misrepresentation with which he was charged.

- i. The applicant contends that the court erred in finding that the evidence of gross dishonesty amply justified the conclusion that the trust relationship had been irretrievably broken down (paragraph 25 of the Judgment). The applicant submits that he did not work with or report to Mr. Sondlo in 2022, that his immediate superiors valued his work and performance, and that no evidence was before the second respondent establishing that he had acted dishonestly.
- j. The applicant contends that the court erred in finding that his contention that the third respondent was motivated by a desire to avert a strike or to curtail the financial implications of retrenchments was speculative (paragraph 24 of the Judgment). The applicant submits that he was a chief negotiator in the 2022 wage negotiations, that the CCMA had issued a certificate for a legal strike due to a deadlock in those negotiations and that all TDR's in the Gauteng Region, including the applicant, were retrenched in 2023.
- k. The applicant contends that the court erred in finding that his grounds of review failed to meet the exacting threshold established by the LRA and that his application was, in substance, an impermissible attempt to appeal against the second respondent's findings (paragraphs 26, 28, and 29 of the Judgment). The applicant submits that the second respondent failed to make findings on all the procedural and substantive issues before him, that he misdirected himself on the facts; that he made several errors of material fact and law; and that the arbitration award lacks sufficient reason and is so unreasonable that no reasonable commissioner could have reached it.

[5] The test for leave to appeal is no longer whether another court might reasonably come to a different view. It is whether there are reasonable prospects of success on appeal, that is, a sound, rational basis for the conclusion that there is a realistic chance of this court's decision being overturned on appeal. A mere arguability or the possibility of an alternative

finding does not suffice. The applicant must demonstrate that the appeal would have a tangible, not speculative, prospect of success.

- [6] Having carefully considered the eleven grounds advanced by the applicant, I find that none, singly or cumulatively, discloses a reasonable prospect of success. The grounds are, in substance, a repetition of arguments already fully ventilated and correctly rejected in the main judgment they identify no misdirection of law or fact reasonably capable of yielding a different outcome on appeal. In truth, they seek impermissibly to re-litigate the same issues without pointing to any palpable error or novel point of substance.
- [7] The applicant has not identified any principle of law this court misapplied, nor any fact it materially misunderstood. In my original judgment of 27 July 2026, I have dealt with most, if not all, of the issues raised by the applicant in his application for leave to appeal, and it is not necessary to repeat those in full. Suffice to restate what I said in my original judgment. The application amounts to a disagreement with the outcome, which is insufficient to warrant leave to appeal.
- [8] The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court can come to a different conclusion from that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, which provides that leave to appeal may only be given where a judge concerned is of the opinion that 'the appeal would have reasonable prospect of success.
- [9] It is trite that if a court is unpersuaded of the prospects of success, it must still enquire into whether there is compelling reason to entertain the appeal. However, the merits remain vitally important and are often decisive. In considering the existence of compelling reasons as envisaged by s 17(1)(a)(ii) of the Superior Courts Act. I am also not persuaded that such reasons exist in

this matter, when considering in the context of prospects of success on the merits.

[10] In *Ramakatsa and Others v African National Congress and Another*¹, the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law, that a court of appeal ‘would’ reasonably arrive at a conclusion different to that of the trial court. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[11] The ratio in *Ramakatsa* simply followed *S v Smith*², in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of 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.”

[12] In *Mont Chevaux Trust v Tina Goosen*³, the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in a judgment in *Notshokovu v S*⁴. In that matter the SCA remarked that an

¹ [2021] ZASCA 31 (31 March 2021)

² 2012 (1) SACR 567 (SCA) at para 7

³ (LCC14R/2014) at para 6

⁴ [2016] ZASCA 112 (7 September 2016)

appellant now faces a higher and more stringed threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁵.

[13] As explained in *MEC for Health, Eastern Cape v Mkhitha and Another, Schippers AJA* provided the following guidance on the test⁶:

“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 Supreme Courts Act 10 of 2013 makes it 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.”

[14] The applicant has not established that the second respondent's findings were untenable or so egregious that no reasonable commissioner could have reached them. The applicant's challenges are, in essence, an attempt to re-argue the merits of the case.

[15] I am not persuaded that the issues raised by the applicant in this application for leave to appeal, are issues in respect of which another court is likely to reach

⁵ [2016] ZAGPPHC 489 at par 25

⁶ [2016] ZASCA 176 at paras 16-17

conclusions different to those reached by me. I therefore conclude that there are no reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. Therefore, in my view, the appeal does not have reasonable prospects of success.

[16] Having considered the papers filed on record and the submissions made by the parties, it follows that the application for leave to appeal, must therefore fail.

Costs:

[17] The applicant has launched an application for leave to appeal which, upon a proper consideration of its merits, was devoid of any realistic prospect of success. The third respondent was consequently compelled to oppose the application. However, in the Labour Court, costs do not ordinarily follow the result, and the Labour Court is a court of equity.

[18] While the applicant's application is without merit, I am not persuaded that this is an appropriate case for a costs order. The applicant appeared in person, and although his status as a self-represented litigant does not exempt him from the consequences of his actions, I consider it just and equitable, in the exercise of the discretion conferred by section 162 of the LRA, to make no order as to costs. Each party shall bear its own costs

Order:

[19] Accordingly, the following order is made:

1. The application for leave to appeal is dismissed.

2. There is no order as to costs.

Khaba AJ
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr. Vincent Mashinini

(Self- Represented)

For the Third Respondent:

Mr. D Woodhouse together with

Mr. Alex Du Plessis

Third Respondent Attorneys:

Pinsent Masons South Africa Inc