

(1) Reportable Yes ☒ No
(2) Of interest to other Judges: Yes ☒ No
(3) Revised
Signature _____ Date 09/06/2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: CA485/24

In the matter between:

IMATU obo YANNICK SAULS

Applicant

and

THE CITY OF CAPE TOWN

First Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL (SALGBC)

Second Respondent

COMMISSIONER ELVISO ADAMS N.O.

Third Respondent

Heard: In Chambers

Delivered: 09 June 2026

JUDGMENT

MKHATSHWA, AJ

Introduction

[1] This is an opposed application for leave to appeal to the Labour Appeal Court against the whole judgement and order of this Court delivered on 26 January 2026.

[2] The parties are cited as they were in the review application.

Grounds of appeal

[3] The First Respondent argues that this Court erred in a number of respects under the following headings:

- 3.1 Misapplication of the review test (*Sidumo* Test).
- 3.2 Failure to consider the totality of the evidence.
- 3.3 Misdirection on nexus between off-duty misconduct and employment.
- 3.4 Failure to engage with the First Respondent's case.
- 3.5 Impermissible interference with sanction.
- 3.6 Mischaracterisation of evidence regarding reputational harm and trust
- 3.7 Irregular reliance on consistency.
- 3.8 Error in substituting reinstatement.

The test for an application for leave to appeal

[4] Applications for leave to appeal are regulated by Rule 67 of the Rules for the Conduct of Proceedings in the Labour Court. The Rule does not deal with the test for the granting or otherwise of the application.

[5] Guidance is to be found in section 17 of the Superior Courts Act¹. The point was made in *Dexgroup (Pty) Ltd v Trust Group International (Pty) Ltd and others*² that the need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit.

¹ Act 10 of 2013.

² 2013 (6) SA 520 (SCA) at para 13.

- [6] In terms of section 17(1)(a)(i) of the Superior Courts Act, leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success.
- [7] Although stated *obiter*, it was held in *Mont Chevaux Trust v Tina Goosen*³ that the wording of the subsection raises the bar of the test that has to be applied to the merits of the proposed appeal before leave should be granted in that the use by the legislature of the word “would” indicates a measure of certainty that another court will differ from the court whose judgement is sought to be appealed against. It has also been held that the use by the legislature of the word “only” in section 17 (1) is a further indication of a more stringent test⁴.
- [8] The point was emphasized by the Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha*⁵, where Schippers AJA held as follows:

“[16] 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.

[17] 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.”

- [9] Having considered the grounds advanced by the First Respondent for leave to appeal and the Applicant’s detailed submissions in response thereto, this Court

³ 2014 JDR 2325 (LCC). See also *Acting National Director of Public Prosecutions v Democratic Alliance In re Democratic Alliance v Acting National Director of Public Prosecutions* (19577/09) [2016] ZAGPPHC 489 (24 June 2016) at para 25.

⁴ See: *Matoto v Free State Gambling and Liquor Authority* (4629/2015) [2017] ZAFSHC 80 (8 June 2017).

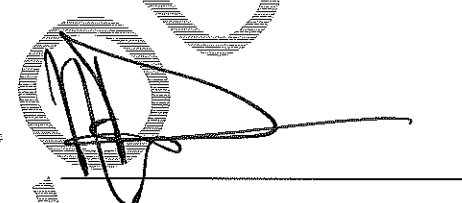
⁵ 2016 JDR 2214 (SCA) at paras 16 and 17. See also: *Black Bond Surfacing (Pty) Ltd v Dynapac Ltd* (59158/2021) [2022] ZAGPJHC 974 (7 December 2022).

has concluded that the appeal has no reasonable prospects of success or that another court will come to a different conclusion. There is also no other compelling reason why the appeal should be heard as there are no conflicting judgments on the matter at hand. Therefore, there is no basis on which this Court can grant the present application.

[10] In the result, the following order is made:

Order

1. The Application is dismissed.
2. There is no order as to costs.



M. Mkhathshwa

Acting Judge of the Labour Court of South Africa