



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case Number: J1843/22

In the matter between:

**KENNETH SKHOSANA**

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION  
AND ARBITRATION (CCMA)**

First Respondent

**SOLLY MASHEGO**

Second Respondent

**ESKOM HOLDINGS SOC (LTD)**

Third Respondent

**Considered in chambers**

**Delivered: 20 November 2024**

(This judgment was handed down electronically by circulation to the parties' legal representatives, by email, publication on the Labour Court's website and released to SAFLII. The date on which the judgment is delivered is deemed to be 20 November 2024.)

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**JUDGMENT**

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**FORD, AJ**

- [1] This is an application for leave to appeal against the whole of my judgment and order, dated 21 August 2024.
- [2] The application is unopposed.
- [3] In terms of s 17(1)(a) of the Superior Courts Act 10, of 2013, leave to appeal "may only be given" when:- the appeal would have a reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."
- [4] The court in *MEC Health, Eastern Cape v Mkhitha*<sup>1</sup>, touching on the test to be applied when considering an application for leave to appeal, stated the following:

Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there is truly 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 or realistic chance 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." (Emphasis added).

- [5] In *Smith v S*<sup>2</sup> the Supreme Court of Appeal, also had occasion to consider what "*reasonable prospects of success*" in section 17(1)(a)(i) meant, it said:

"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 convince this court on proper grounds that he has prospects of success on

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<sup>1</sup> 2016 JDR 2214 (SCA) para 16-17

<sup>2</sup> 2012 (1) SACR 567 (SCA) at para 7

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".

- [6] In *Fair Trade Tobacco Association v President of the Republic of South Africa and Others*<sup>3</sup> a full bench held that:

"As such, in considering the application for leave to appeal, it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might find differently on both the facts and the law. It is against this background that we consider the most pivotal grounds of appeal."

- [7] In *Democratic Alliance v President of the Republic of South Africa and Others*<sup>4</sup> the court held:

"Leave to appeal is not simply for the taking. A balance between the rights of the party which was successful before the court a quo and the rights of the losing party seeking leave to appeal need to be established so that the absence of a realistic chance of succeeding on appeal dictates that the balance must be struck in favour of the party which was initially successful."

- [8] As stated in the main application, which I was called upon to determine, the applicant, *Skhosana* was employed by the first respondent, *Eskom*, as a Service Agent at T10 level, from 1 March 1985.

- [9] He was paid a shift allowance for performing his duties. In 2022, he started complaining of headaches and pain in his ears, caused by workplace noise. On or about March 2022, he was removed from doing shift work, as a temporary measure. As a result of being removed from doing shift work, Eskom stopped paying him a shift allowance. He then lodged a grievance as provided for in Eskom's grievance procedure. Unhappy with the outcome of the various grievances, he referred an

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<sup>3</sup> 2020 JDR 1435 (GP) at [6]

<sup>4</sup> (21424/2020) [2020] ZAGPPHC 326 (29 July 2020) at par [5]

unfair labour practice dispute to the CCMA. The arbitrator, whose decision Skhosana sought to impugn, agreed with Eskom.

- [10] In the main application, and repeated in the application for leave to appeal, Skhosana contends that a shift allowance ought to be paid in full for the period of absence, in case of occupational accident leave.
- [11] Skhosana's reliance on clause 3.10.1 is objectively wrong, as he was not absent from work due to an occupational disease, but owing to the fact that he is undergoing a medical investigation to determine the root cause of his hearing/noise complaint. Skhosana cannot be paid a shift allowance as he is currently not on shift work, and is accommodated on non-shift work.
- [12] In this application for leave to appeal, Skhosana repeats the same arguments and contentions advanced in the main application.
- [13] I have considered the grounds of appeal advanced by Skhosana and conclude that there is no realistic chance of him succeeding on appeal.
- [14] In the result, I make the following order:

Order

1. The application for leave to appeal is refused.
2. There is no order as to costs.



Bart Ford

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant:	Mr. K. Skhosana (in person)
For the Respondents:	No appearance