

SOUTH AFRICA / JUDGMENT

Mofu v Nala Local Municipality (5224/2024) [2025] ZAFSHC 199 (27 June 2025)

[2025] ZAFSHC 199

COURT

Free State High Court, Bloemfontein

BEFORE

Grobler AJ

CASE / FILE NUMBER

5224/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not reportable

Case

no: 5224/2024

In

the matter between

NOBELUNGU

MOFU

APPLICANT

And

NALA

LOCAL MUNICIPALITY

RESPONDENT

Neutral

citation: Mofu v Nala Local

Municipality (5224/2024) [2025] ZAFSHC

199 (26 June 2025)

Coram:

Grobler AJ

Heard:

13 March 2025

Delivered:	This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 15:00 on 27 June 2025.
Summary:	Leave to appeal – person acting on behalf of juristic or natural person – required to allege and prove authority to do so – question not one of locus standi but authority – authority to be challenged in terms of rule 7 of the Uniform Rules of Court thereafter – dispute of fact on papers – Plascon-Evans rule applied. ORDER 1 The application for leave to appeal is dismissed. 2 The applicant is ordered to pay the costs.

JUDGMENT

Grobler AJ

Introduction

- [1] The applicant, Ms Nobelunga Mofu (Ms Mofu), applied for an order declaring deductions effected by the respondent, Nala Local Municipality (the Municipality), from all of the stated applicants' salaries as being unlawful and invalid, consequential relief in the form of ordering the Municipality to refund all monies so deducted, and costs.
- [2] The matter served before me as a fully-fledged opposed application on 13 February 2025.
- [3] Ms Mofu launched the application. She identified 93 other applicants in her founding affidavit. No confirmatory affidavits were appended for those people, they were not properly identified (except to allege that they were also employees of the respondent) and Ms Mofu made no allegation that she has been authorised to so act on behalf of the other applicants. She sought an order declaring deductions effected by the Municipality from all of their salaries as being unlawful and invalid.
- [4] The Municipality opposed the application. Aggrieved by the dismissal of their application before me, the applicants approached this court, on 13 March 2025, with an application for leave to appeal against the whole of the judgment and order of this court dated 20 February 2025.

The salient facts

- [5] The Municipality employed Ms Mofu as a general worker. On 9 September 2024, she deposed to a founding affidavit stating that, on 26 July 2024, the Municipality made seemingly indiscriminate, uncalculated deductions from all the applicants' salaries after they had embarked upon industrial action. She stated that the industrial action lasted for 20 days after which all of the applicants returned to work but, on resumption of their duties, the Municipality made the deductions. She also attaches a spreadsheet showing the total of individual deductions made from all of the applicants' salaries.
- [6] She complained that this is unlawful in the sense that s 34 of the Basic Conditions of Employment Act 75 of 1997, only allow for deductions from an employee's remuneration in certain instances.[1] En passant, it is common cause that s 34 was not followed, and thus, if I am to find that what happened to the applicants amounted to a deduction for purposes of s 34 and otherwise, the Municipality's action would be unlawful.
- [7] The Municipality contended that no deductions were made. It simply says that Ms Mofu and the other applicants did not work during the time of the industrial action. Thus, in terms of the labour law dispensation as it exists today, the applicants were not paid.

Grounds of appeal

- [8] The salient grounds on which the applicants rely for leave to appeal are set out in their notice of application for leave to appeal and I summarise below.
- [9] The court erred in finding that the applicants issued the application on behalf of the other applicants. The respondent contends that the applicant pleaded in her founding affidavit that she is deposing to the affidavit on behalf of the other applicants.
- [10] The court erred in upholding the preliminary point raised by the respondent challenging the locus standi of Ms Mofu, the applicant, to bring the application on behalf of the other applicants when no procedure in terms of rule 7 of the Uniform Rules of Court was followed. Consequently, the applicant asserts that the court misdirected itself and violated the established legal principle that no authority is required when deposing to an affidavit.
- [11] Additionally, the court misdirected itself in holding that blame was not to be attributed to the Municipality for avoiding the rule 7 procedure. To this end, the applicant's failure to make an allegation in respect of her authority to institute the proceedings on behalf of the other applicants was neither here nor there because the rule applies to all cases where a litigant challenges authority and there should be no exceptions to this rule.
- [12] The court misdirected itself in finding that the applicant simply approached the court for a claim on behalf of the other applicants, namely 'Second to Further Applicants'.

- [13] The court misdirected itself in overemphasising the issue that confirmatory affidavits were required to be appended to the founding affidavit, as none were required, save to confirm the contents of an affidavit relating to each individual. The applicant further avers that the court was misplaced and misdirected in making the finding that the few confirmatory affidavits that were attached were wholly insufficient.
- [14] The applicant raise a further challenge that ‘the court over-looked the fact that the municipality challenged the authority to act though none existed and exempting the municipality despite that is misdirection and a miscarriage of justice’.
- [15] The applicant, furthermore, contend that ‘the court erred and misdirected itself in making the finding that the proceedings against the other applicants are unauthorized as there are no proceedings on behalf of other applicants in the present case’. I suppose the applicants’ contention is based on the court’s finding that no person may generally and without more institute legal proceedings on behalf of another.
- [16] The court erred in finding that there were no deductions made by the Municipality and upholding the respondent’s version and for finding that –
- ‘a. The pay slips reflected the whole amounts that the employees earn and there was a reduction thereafter and if the employees did not earn the amounts such should have not reflected in the salary advices.
- b. If any employee did not earn a salary, zero should have reflected on the salary slips.’
- [17] On the above stated grounds, it is the applicant’s case that another court would come to a different

conclusion.

Leave to appeal

- [18] Before dealing with the merits of this application for leave to appeal, I first traverse the applicable requirements and test for an application for leave to appeal.
- [19] The traditional test applied by our courts in considering applications for leave to appeal is whether there is a reasonable prospect that another court may come to a different conclusion to the one reached by the court of first instance.
- [20] Section 17 of the Superior Courts Act 10 of 2013 now legislates the circumstances in which leave to appeal is to be sought and granted. Section 17(1) reads:
- ‘17. Leave to appeal. — (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 judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[21] In *Mont Chevaux Trust v Goosen and Others*,^[2] the court had the following to say regarding the test for leave to appeal:

‘It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985

(2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.’ (Emphasis added.)

[22] In *Valley of the Kings Thaba Motswere (Pty) Ltd v Al Mayya International*,^[3] Smith J stated the following:

‘There can be little doubt that the use of the word "would" in section 17 (1)(a)(i) of the Superior Courts Act implies that the test for leave to appeal is now more onerous. The intention clearly being to avoid our courts of appeal being flooded with frivolous appeals that are doomed to fail. I am, however, of the respectful view that the "measure of certainty" standard propounded by the learned judge in *Mont Chevaux Trust* (supra) may be placing the bar too high. It would, in my respectful view, be unreasonably onerous to require an applicant for leave to appeal to convince a judge – who invariably would have provided extensive reasons for his or her findings and conclusions – that there is a "measure of certainty" that another court will upset those findings. It seems to me that a contextual construction of the phrase "reasonable

prospect of success" still requires of the judge, whose judgment is sought to be appealed against, to consider, objectively and dispassionately, whether there are reasonable prospects that another court may well find merit in arguments advanced by the losing party. I shall accordingly consider the arguments advanced on behalf of the applicants on this basis.’ (Emphasis added.)

[23] In *Smith v S*,^[4] Plasket AJA, had occasion to consider what constituted reasonable prospects of success in s 17(1)(a)(i) and held:

‘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. [11] 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.’

[24] In this division, it was held as follows regarding the same test in *Ntsoereng and Another v Sebofi and Another*; *In re: Sebofi v Ntsoereng*:^[5]

‘Prior to the promulgation of Act 10 of 2013, the test was lower in that it merely required of an applicant to indicate that there is a reasonable possibility that another Court may come to a different finding. That is no longer the case, however. The new higher test now requires a reasonable prospect of success, not merely a possibility.’

[25] The Supreme Court of Appeal, however, in *MEC for Health, Eastern Cape v Mkhita and Another*,^[6] dealt with the issue and stated that an applicant for leave to appeal must convince the Court on proper grounds that there is a reasonable prospect of the realistic chance of success on appeal. However, the Supreme Court of Appeal did not say that the bar has been raised by the provisions of the Superior Courts Act.

[1] Section 34(1) and (2) of the Basic Conditions of Employment Act 75 of 1997 states as follows:

‘1 An employer may not make any deduction from an employee’s remuneration unless –

- (a) subject to subsection (2) and the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
- (b) deductions required or permitted in terms of a law, collective agreement, court order or arbitration award.

2 A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if –

- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
- (b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
- (c) the total amount of the debt does not exceed the actual amount of the loss or damage; and
- (d) the total deductions from the employee’s remuneration in terms of this subsection do not exceed one quart of the employee’s

remuneration in money.’

[2] *Mont Chevaux Trust v Goosen and Others*

[2014] ZALCC 20 para 5.

[3] *Valley of the Kings Thaba Motswere (Pty) Ltd and Another v Al Mayya International*

[2016] ZAECGHC 137 para 4.

- [4] Smith v S 2011] ZASCA 15; 2012 (1) SACR 567 (SCA) para 7.
- [5] Ntsoereng and Another v Sebofi and Another; In re: Sebofi v Ntsoereng [2016] ZAFSHC 153 para 38.
- [6] MEC for Health, Eastern Cape v Mkhitha and Another
[2016] ZASCA 176.
- [7] Ganes and Another v Telecom. Namibia Ltd
[2003] ZASCA 123; [2004] 2 All SA 609 (SCA); 2004 (3) SA 615 (SCA);
(2004) 25 ILJ 995 (SCA) (Telecom Namibia Ltd) para 19.
- [8] Eskom v Soweto City Council 1992
(2) SA 703 (W) at 705E-F.
- [9] Telecom Namibia Ltd para19; see also Firststrand Bank Ltd v Fillis and Another
[2010] ZAECPHC 50; 2010 (6) SA 565 (ECP) para 13.
- [10] Para 4.1 of the Founding Affidavit also states:
‘The Second to further Applicants are all male and female employees of the Respondent working at various sections and divisions of the Respondent and for purposes of this application and also (sic) assume the address of their attorneys as recorded in the Notice of Motion. The names of the Second and further Applicants are detailed in the document marked ‘A’ attached hereto.’
- [11] See also: Replying Affidavit on p. 122, para 6.1 where Ms Mofu simply describes herself as a witness.

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