

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: J106/2020

Not Reportable

In the matter between:

SCAW SOUTH AFRICA (PTY) LTD
(Respondent in the application for leave to appeal)

Applicant

And

NATIONAL UNION OF METAL
WORKERS OF SOUTH AFRICA
(Applicant in the application for leave to appeal)

First Respondent

THE INDIVIDUALS WHOSE NAMES APPEAR LISTED
IN ANNEXURE "A" TO THE NOTICE OF MOTION

Second to Further

Respondents

Decided: In chambers

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 10h00 on 29 January 2024.

**JUDGMENT IN APPLICATION
FOR LEAVE TO APPEAL**

ALLEN-YAMAN J

[1] The first respondent has applied for leave to appeal against the whole of the judgment of this court which was handed down on 25 July 2023, in which judgment it was ordered to pay the applicant's costs of an application in which it had sought certain

relief relating to a strike which had been undertaken by the second to further respondents. The main issues having become resolved between the parties, the only issue for determination was that relating to costs.

[2] The first respondent applied for leave to appeal timeously, but did not deliver its submissions in terms of Rule 30(3A) in compliance with the time period stipulated in clause 15.2 of the Practice Manual. This being so, the first respondent sought an order that condonation for such delay be granted.

[3] The applicant opposed both the granting of condonation and of leave to appeal.

[4] Insofar as the first respondent's condonation application is concerned, the period of delay is 11 days, a fairly insignificant period. The period of the delay is both largely unexplained (there having been no explanation for its failure to have attended to that which was required of it from 25 to 29 August 2023, and the first respondent's attorney of record having evidently been fit to have resumed work by not later than 4 September 2023, having been medically incapacitated in the time in between). Distinct from these issues, and the issue of the first respondent's potential prospects of success, this court finds the late delivery of the Rule 30(3A) submissions has not prejudiced the applicant, notwithstanding its assertion to the contrary.

[5] It was the applicant's assertion that, should the first respondent be permitted to proceed with its application for leave to appeal, it would be required to defend a matter that was without merit.

[6] A distinction must be drawn between an application for leave to appeal and the submissions which are required to be delivered by the parties pursuant to such an application having been made. The Notice of application for leave to appeal in terms of Rule 30(1) constitutes the document which initiates such application, whilst the submissions which are required to be delivered in terms of Rule 30(3A) encompass the parties' arguments in substantiation and elaboration of the grounds of appeal articulated in its Rule 30(1) Notice. In Ralo v Transnet Port Terminals and Others [2015] 12 BLLR 1239 (LC), this court described the effect of a failure on the part of a litigant to deliver submissions in the following terms,

‘Considering that a Judge is entitled, in terms of the Practice Manual, to decide a leave to appeal application in chambers based on written submissions, the failure to file written submissions in these instances may be viewed to be similar to a party failing to appear in Court to argue the case, and all the consequences associated with it, which may include dismissing the application on this basis alone. But at the very least, this failure by the applicant leaves the leave to appeal application unmotivated.’³

[7] It accordingly does not follow that the failure to deliver Rule 30(3A) submissions timeously, or indeed at all, *ipso facto* results in leave to appeal being refused. As the Rule 30(3A) submissions are intended to do no more than to advance the parties’ respective cases, it cannot be said that the granting of condonation will result in a situation whereby the applicant would be constrained to participate in proceedings in which it would otherwise not have been required to participate.

[8] Accordingly, given the relatively short delay and that the applicant does not stand to be prejudiced by the granting of condonation therefor, and for the sake of allowing the first respondent to ventilate its arguments fully on the merits, condonation for the late delivery of the first respondent’s Rule 30(3A) submissions will be granted.

[9] Insofar as the first respondent’s application for leave to appeal is concerned, this court has considered the grounds upon which it has relied, as amplified by its Rule 30(3A) submissions, together with the arguments advanced by the applicant in its Rule 30(3A) submissions.

[10] The threshold to be met by a litigant seeking leave to appeal is that established in s17(1) of the Superior Courts Act, 2013 which provides that,

‘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

³ At paragraph 7

(ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;*

[10] In addition to having been bound by the decision of the Labour Appeal Court in Food and Allied Workers Union v In2food (Pty) Ltd (2014) 35 ILJ 2767 (LAC), in which the Labour Appeal Court endorsed the principle of the accountability of trade unions, this court exercised its discretion in relation to the order that the first respondent be required to pay the applicant's costs whilst mindful of the principles established in s162 of the LRA. In so doing this court was both alive to and considered the issues which have again been raised by the first respondent in the present application, as has been detailed in its judgment.

[11] In the circumstances, this court is not of the opinion that the proposed appeal would have any reasonable prospects of success, and can discern no other compelling reason to grant the first respondent leave to appeal. In the circumstances, the first respondent's application for leave to appeal will be refused.

[12] As the applicant did not ask that the application for leave to appeal be dismissed with costs, no consideration need be given to the costs of the present application.

Order

1. The first respondent is granted condonation for the late delivery of its submissions in terms of Rule 30(3A) read with clause 15.2 of the Practice Manual.
2. Leave to appeal is refused.

Kelsey Allen-Yaman
Judge of the Labour Court of South Africa

Appearances:

First Respondent
(Applicant in application for leave to appeal)

Submissions prepared by Mr R Daniels, Cheadle Thompson & Hayson Inc

Applicant

(Respondent in application for leave to appeal)

Submissions prepared by Mr R Itzkin, briefed by Wilken Inc

LABOUR COURT