

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR 2154/21

In the matter between:

WESBANK, A DIVISION OF FIRSTRAND LIMITED

Applicant

And

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

First Respondent

NTOMBEKHAYA SESANI N.O.

Second Respondent

BHEKUMUZI GODFREY MTSHWENI

Third Respondent

Decided: In Chambers

Judgment: 02 February 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 02 February 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J

[1] The Applicant applied for leave to appeal against the whole of the judgment and order, delivered on 13 December 2023.

[2] I have considered the grounds for appeal raised by the Applicant as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

The test for leave to appeal

[3] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act¹ (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.²

[4] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion.

[5] It is further trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

[6] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,³ this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

‘The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie*

¹ Act 66 of 1995, as amended.

² See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

³ (2016) 37 ILJ 1485 (LC) at para 3.

Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015).’

[7] In deciding this application for leave to appeal, I am also guided by the *dicta* of the Supreme Court of Appeal where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*⁴ 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. It should in this case have been deployed by refusing leave to appeal.’

This application

[8] I have considered the submissions made in support of the grounds for appeal and applying the applicable test, I am not convinced that the Applicant has made out a case for leave to appeal to be granted.

[9] This matter concerns the application of established and trite principles governing the threshold for interfering with an arbitration award on review. There is no novel issue, nothing unique or any legitimate dispute about the applicable legal principles involved. In short: there is no legitimate dispute on the law and the Applicant is unable to cross this hurdle.

⁴ 2013 (6) SA 520 (SCA) at para 24.

[10] There is also not a reasonable prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion.

Conclusion

[11] I have considered the submissions made in the application for leave to appeal and applying the applicable test, I am not convinced that the Applicant has made out a case that passed the test and the high threshold of a reasonable prospect that another court would come to a different conclusion.

[12] In the premises, I make the following order:

Order

1. The application for leave to appeal is dismissed with no order as to costs.

Connie Prinsloo
Judge of the Labour Court of South Africa