

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J423/2023

In the matter between:

THE REGISTRAR OF LABOUR RELATIONS

Applicant

and

YOUNG NURSES INDABA TRADE UNION

First Respondent

MFANELO SICINA

Second Respondent

MULATEDZI RAMAANO

Third Respondent

JOHN DZAKANI

Fourth Respondent

LERATO MTHUNZI

Fifth Respondent

NKOSINGIPHILE MCHUNU

Sixth Respondent

NKOSI PHUMZILE

Seventh Respondent

and

BAFANA TSHABALALA

First Intervening Party

NKHUMELENI MAKHADO

Second Intervening Party

MATEBELLO PITSO

Third Intervening Party

LEHLOGONOLO MOLOI

Fourth Intervening Party

SAMKELISO ELVIRA PHIRI

Fifth Intervening Party

KARABO SEEMA

Sixth Intervening Party

LWANDO NICOUS MROBONGWANA

Seventh Intervening Party

GAONYADIWE MILDRED MATLHAKU

Eighth Intervening Party

LEOTJANA TSHOANELO SKAKU

Ninth Intervening Party

AUBREY PHATHUTSHEDZO LIDZEBE

Tenth Intervening Party

NKHUMELENI RODNEY MAKHADO

Eleventh Intervening Party

MAKOENA JOYCE RAKUMAKO

Twelfth Intervening Party

MFANVELA NKONYANE

Thirteenth Intervening Party

SIYABONGA NKANYISO MBATHA

Fourteenth Intervening Party

NONTETHELO MHLELEMBANA

Fifteenth Intervening Party

MMELESI TITUS MOEPENG

Sixteenth Intervening Party

TRYWELL SMISO XULU

Seventeenth Intervening Party

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 19 March 2024.

JUDGMENT

MAHOSI, J

- [1] The respondents brought an application for leave to appeal against the judgment of this Court handed down on 14 June 2023, in which the first respondent was placed under administration.
- [2] The applicant opposed the application and filed submissions in terms of Rule 30(3A) of the Rules for the conduct of proceedings in the Labour Court (the rules).
- [3] The grounds raised by the respondents were that the Court misdirected itself in:
- 3.1 Finding that placing the first respondent under administration was better than deregistering it in circumstances where the question before the Court was whether the Registrar was adequately exercising his powers within the prescripts of section 103A.
- 3.2 Accepting that the first respondent's second National Congress did not comply with the LRA in that the attendance register did not specify the place of work or work status of the attendees, while section 100(d) does not require the first respondent to submit the work address or work status of people that attended the Congress.
- 3.3 Granting the applicant's order placing the first respondent under administration in circumstances where the applicant had already initiated deregistration proceedings in terms of section 106(2A), which the first

respondent was attending to and the facts relied upon to place the first respondent under administration did not permit such an order.

- 3.4 Finding that the deregistration proceedings under section 106(2A) and administration proceedings under section 103A were alternatives to each other, it misdirected itself in failing to recognize that the two processes are different from each other and are not available to the Registrar simultaneously.
 - 3.5 Granting the administrator powers that are in no way connected to the reasons why the first respondent was placed under administration.
 - 3.6 Failing to take into account that the threshold for the appointment of an administrator is strict because it implicates and limits several constitutional rights of the first respondent and its members, including section 23(4), which effectively protects the first respondent against unlawful interference.
- [4] The traditional test for determining whether to grant an application for leave to appeal is whether there is a reasonable prospect that another court will reach a different conclusion.¹ In terms of section 166(1) of the Labour Relations Act² (LRA), a party to proceedings before the Labour Court, may apply to the Labour Court for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court.

¹ See: *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC) at 2890B; *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC) at 1443 para 2 and *Tsotetsi v Stallion Security (Pty) Ltd* (2009) 30 ILJ 2802 (LC) at 2804 para 14.

² Act 66 of 1995 as amended.

[5] Section 17 of the Superior Court Act,³ which applies to the Labour Court and regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

‘Leave to appeal may only be given where the judge or judges 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 decisions sought on appeal do 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 issue between the parties.’

[6] Section 16(2)(a) of the Superior Court Act provides as follows:

- ‘(i) When at the hearing of the appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.
- (ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.’

³ Act 10 of 2013.

[7] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*,⁴ the LAC made it clear that leave to appeal is not simply there for the taking and that this Court must be cautious in granting leave to appeal and in assessing the requirement of the prospect of success. In this case, the Court stated as follows:

‘...The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the Court *a quo*, need to be cautious when leave to appeal is granted, as should this Court when petitions are granted.

There are two sets of interests to consider. There are the interests of the parties such as appellant, namely who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to a different conclusion. There are also the rights of employees who land up in a legal "no-man's-land" and have to wait years for an appeal (or two) to be prosecuted.

This was a case which should have ended in the labour court. This matter should not have come to this Court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court *a quo* misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law that is different. But this kind of case should not reappear

⁴ (2014) 35 ILJ 2399 (LAC).

continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.⁵

[8] In this case, having had regard to the parties' submissions, I am not persuaded that there are reasonable prospects of a successful appeal. As such, this application is without merit and ought to be dismissed.

[9] Regarding costs, I believe that the requirements of law and fairness dictate that there should be no order as to costs.

[10] Accordingly, the following order is made:

Order

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

D. Mahosi
Judge of the Labour Court of South Africa

⁵ *Ibid* at 2405-2406.