

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: J 763/23

RUNIS CAMPHER BROKERS

Applicant

and

DANIELLE UREN

Respondent

Decided: In Chambers

Judgment: 19 March 2024

This judgment was handed down electronically by circulation to the parties by email. The date for hand-down is deemed to be on 19 March 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 20 February 2024.
- [2] I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof. Both parties filed comprehensive submissions, which I have taken time to peruse and consider 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 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

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.

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] I will deal with only one ground for leave to appeal to illustrate that there is no merit in the application. The Applicant's case is that this Court erred by not exercising its discretion judicially when awarding costs against the Applicant, when there was no reason to deviate from the general rule '*that a losing party in labour matters should not be mulcted in costs.*' The Applicant submitted that this Court '*committed an error of law by not providing any reasons for the departure from the rule that costs do not follow the result..*'
- [10] The submissions made by the Applicant have no merit and display a lack of understanding of how the issue of cost is to be decided by this Court.
- [11] Paragraphs 29 - 37 of the judgment were dedicated only to the issue of costs, the applicable authorities and the balance the Court has to strike in deciding the issue of costs. The reasons why a cost order was awarded, are set out in paragraphs 36 and 37 of the judgment, as a proper perusal thereof would disclose. There is no merit in the Applicant's submission that this Court

⁴ 2013 (6) SA 520 (SCA) at para 24.

committed an error ‘*by not providing any reasons*’ for a departure from the normal rule.

- [12] Furthermore, the contempt of Court application is premised on a judgment, issued in respect of a restraint of trade. The Labour Appeal Court has held⁵ that when this court exercises its jurisdiction under section 77(3) of the Basic Conditions of Employment Act⁶, as it did in the instance of a restraint of trade, which is a contractual dispute, the rule established by section 162 of the LRA to the effect that costs do not follow the result, does not apply. The rule to be applied in contractual disputes and litigation, is that costs follow the result, save in exceptional circumstances.
- [13] Be that as it may, in deciding the issue of costs, the Court exercises a discretion. In *MEC for Environmental Affairs and Development Planning v Clairison’s CC*⁷ the Supreme Court of Appeal described the test that applies to the review of a discretion as follows:

When the law entrusts a functionary with a discretion it means just that: the law gives recognition to the evaluation made by the functionary to whom the discretion is entrusted, and it is not open to a court to second-guess his evaluation. The role of a court is no more than to ensure that the decision-maker has performed the function with which he was entrusted.

..... The law remains, as we see it, that when a functionary is entrusted with a discretion, the weight to be attached to particular factors, or how a particular factor affects the eventual determination of the issue, is a matter for the functionary to decide, and as he acts in good faith (and reasonably and rationally) a court of law cannot interfere.

- [14] When the exercising of a discretion is challenged, the test that the court, called upon to interfere with the discretion, will apply is to evaluate whether the decision maker acted capriciously, or upon the wrong principle, or with bias, or whether or not the discretion exercised was based on substantial reasons or whether or not the decision maker adopted an incorrect approach.

⁵ See *Baise v Mianzo Asset Management* (2019) 42 ILJ 1987 (LAC)

⁶ Act 75 of 1997, as amended.

⁷ 2013 (6) SA 235 (SCA) paras 18 and 20.

- [15] Considering the test to be applied in challenging a discretion, the Applicant has not made out a case to show that there is a possibility that the Labour Appeal Court would come to a different conclusion.

Conclusion

- [16] I have considered the grounds for 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.
- [17] 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. 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.
- [18] 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