

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J 889/2022

JR 1823/2022

In the matter between:

IN CHAMBERS

**LIMPOPO PROVINCIAL DEPARTMENT OF
SPORTS, ARTS AND CULTURE**

Applicant

and

KHOLOFELO KOLA AND 62 OTHERS

Respondents

In re:

KHOLOFELO KOLA AND 62 OTHERS

Applicants

and

**LIMPOPO PROVINCIAL DEPARTMENT OF
SPORTS, ARTS AND CULTURE**

First Respondent

Second Respondent

Third Respondent

RAMOKGOPA, MAPULA DAPHNE N.O.

MASENYA, THABO N.O.

Delivered: 28 March 2024

(This judgment was handed down electronically by circulation to the parties' legal representatives, by email, publication on the Labour Court's website and released to SAFLI.)

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK, J

- [1] The applicant seeks leave to appeal against a judgment delivered by this court on 14 April 2023. In its judgment, the court dismissed an application to condone the late filing of an application to review and set aside an arbitration award issued in favour of the respondents, and dismissed the review application, with costs. The underlying arbitration award is one in which the respondents were awarded reinstatement as permanent employees of the applicant. The application for leave to appeal was delivered on 8 May 2023, by email, outside of the prescribed period of 15 days. The original documents were filed on 14 August 2023, in breach of Rule 5(3). Further, written submissions in support of the application for leave to appeal were filed only on 25 August 2023, in breach of clause 15.2 of the Practice Manual. Condonation for all of these failures to comply with the relevant time limits was condoned on 21 December 2023, on the basis that the applicant was afforded an opportunity to deliver any additional submissions in support of the application by no later than 29 January 2024. No further submissions were received.
- [2] The grounds for leave to appeal include averments to the effect that the court erred in finding that the applicant had failed to explain the delay, and in refusing to consider what were submitted to be reasonable prospects of success.
- [3] The principles that are applicable where a party seeks an indulgence from the court (as the applicant did) are equally well-established. The applicant must provide an explanation for the entire period of default, the applicant must have reasonable prospects of success in the main application and the granting of condonation must be in the interests of justice.
- [4] To the extent that the applicant submits that the court erred by finding that the applicant had proffered no explanation for the delay, there is patently no merit in

this submission. On the contrary, the judgment makes specific reference to the explanation for delay and finds that the explanation was vague and unsatisfactory and failed to cover the whole period of the delay. There is thus no merit in this ground of appeal. In so far as the applicant relies on internal administrative processes to explain the delay, on the applicant's own version, the state attorney placed itself on record only some two months after it was instructed to review the award, the first consultation with counsel was held in circumstances where the review application was already two months late, and where no confirmatory affidavit was filed in support of what were contended to be internal challenges at the office of the state attorney.

- [5] In so far as the applicant submits that the court failed to have proper regard to its prospects of success, the allegation of reasonable prospects of success cannot save a litigant from a manifest failure to provide a satisfactory explanation for its failure to comply with prescribed time limits. The prospects of success are not a stand-alone factor; indeed, the LAC has made clear that in the absence of a failure to satisfactorily explain an excessive delay, the prospects of success are immaterial (see *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC)).
- [6] Finally, to the extent that applicant seeks in its submissions in support of the application to submit a new ground of mootness and the necessity to join the Treasury and/ or the national department to the proceedings, this not a ground of appeal foreshadowed in the application for leave to appeal. It is not open to the applicant to raise new grounds for appeal in its written submissions. In any event, the point is wholly devoid of substance. The only parties to the arbitration proceedings were the department (in its capacity as employer) and the respondents (as employees claiming the status of permanent employment). At no point in either the arbitration proceedings or in the proceedings before this court was the point of non-joinder taken. What remains at this stage is compliance with the award issued by the arbitrator – no other processes are necessary in terms of

any legislation or otherwise that trump the provisions of the LRA. Further, the averment that the respondents were effectively employees of the national department stands in direct contrast to a contrary averment made under oath in the review application.

- [7] The test on appeal is well-established – the court must determine whether the appeal would have a reasonable prospect of success, or whether there is some other compelling reason why the appeal should be heard. There is no merit in any of the grounds for appeal raised by the applicant and the application stands to be dismissed. For the purposes of Section 162, the requirements of the law and fairness are best satisfied by an order for costs in the respondents' favour. The respondents are individual employees who have been denied the benefit of an arbitration award issued in their favour more than two years ago in circumstances where the applicant has sought to frustrate the implementation of that award at every turn, with a failure by the applicant to file the review timeously, to file the application for leave to appeal and submissions in support of that application within the prescribed time limit. There is no reason to deny the respondents the costs that they have incurred in opposing this application.

I make the following order:

1. The application for leave to appeal is dismissed, with costs.

Van Niekerk JA