

**IN THE LABOUR APPEAL COURT OF SOUTH - AFRICA
HELD AT JOHANNESBURG**

CASE NO: DA19/2000

In the matter between:-

KEM - LIN FASHIONS

Appellant

v

C BRUNTON

First respondent

**BARGAINING COUNCIL FOR THE
CLOTHING INDUSTRY (NATAL)**

Second respondent

JUDGMENT

JOFFE, J

1. The applicant brought an application in the Labour Court. It was dismissed. It then appealed to this Court. The appeal was dismissed. The judgment of this Court in that appeal is reported. See (2001) 22 ILJ 109 (LAC). The applicant now seeks a certificate in terms of Rule 18 of the Constitutional Court on a constitutional matter which it contends arises in the appeal. What falls first to be decided is whether that rule is applicable.

2. Rule 18(1) reads as follows:

“The procedure set out in this rule shall be followed in an application for leave to appeal directly to the Constitutional Court where a decision on a constitutional matter, other than an order of constitutional invalidity under section 172(2)(a) of the Constitution, has been given by any court other than the Supreme Court of Appeal irrespective of whether the Chief Justice has refused leave or special leave to appeal.”

The rule clearly contemplates the engagement of the Constitutional Court prior to the appeal procedure through the different courts being completed. This is apparent from the words “*leave to appeal directly to the Constitutional Court*” and the reference to a decision “*by any court other than the Supreme Court of Appeal.*” What is therefore envisaged by Rule 18(1) is a hiatus in the normal sequence of appeals. An appellant may seek leave to appeal to the Constitutional Court without exhausting his appeal remedies in regard to the issues referred to in Rule 18(1). In **MEC for Development Planning and Local Government, Gauteng v Democratic Parties and others 1998(7) BCLR 855(CC)** Chaskalson P stated: “*Rule 18 of the existing Constitutional Court Rules makes provision for appeals to the Constitutional Court from decisions of the High Court.*” In footnote 16 of the judgment at 862 Chaskalson P made the following note about Rule 18: “*These rules deal with appeals from decisions of provincial or local divisions of the Supreme Court but in terms of item 16(5)(c) of schedule 6 of the 1996 Constitution, this must now be read as referring to appeals from the High Court.*” Again at 869 F - G

(par'5) Chaskalson P repeated this when he said: "*Rule 18 of the Constitutional Court Rule deals with appeals from the High Court to this Court.*"

3. In the present matter the applicant has exhausted its remedies of appeal. Rule 18 accordingly does not appear to fit.
4. Of course this would not be the position if an appeal lay to another court, other than to the Constitutional Court, from a judgment of the Labour Appeal Court. Section 168 of the Constitution (Act 108 of 1996) provides that the Supreme Court of Appeal is the highest court of appeal except in constitutional matters and may decide appeals in any matter. This would seem to indicate that there is an appeal from this Court to the Supreme Court of Appeal.
5. Such a conclusion would be contrary to the provisions of s 167(3) of the Labour Relations Act 66 of 1995. The section provides:

"The Labour Appeal Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which the Supreme Court of Appeal has in relation to matters under its jurisdiction."

On its wording an appeal cannot lie from this Court to the Supreme Court of Appeal. It is inconceivable that a judgment of a court of equal authority can be taken on appeal to a court of equal authority and standing.

6. The constitutionality of s 167(3) of the Labour Relations Act was not argued before us. Accordingly it would not be appropriate for this Court to consider it mero motu.
7. The appellant's difficulty in construing Rule 18(1) can be dealt with by construing the rule in such a manner that it would not apply to applications after an appeal had been heard by the Labour Appeal Court just as it does not apply to appeals from the Supreme Court of Appeal.
8. In the result the application falls to be dismissed with costs.

M M JOFFE
ACTING JUDGE OF APPEAL

R M M ZONDO
JUDGE PRESIDENT

M T R MOGOENG
JUDGE OF APPEAL

Date of Judgment: 29 June 2001

