

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

Case no: JR1596/05

In the matter between:

RICHARD SETHLOTLO MOKATSANE Applicant

And

**COMMISSION for CONCILIATION
ARBITRATION AND MEDIATION 1ST Respondent**

M E PHALA N O 2ND Respondent

**NATIONAL HEALTH LABORATORY
SERVICES 3RD Respondent**

JUDGMENT

MOLAHLEHI J

Introduction

- [1] The applicant seeks leave to appeal against the order issued by this court dismissing his review application dated 21st August 2007.
- [2] The third respondent raised a *point in limine* against the application contending that the leave to appeal is defective because the applicant failed to transcribe the judgment of the court.

Background facts

- [3] The applicant, a former employee of the third respondent resigned from his employ with immediate effect on the 3rd February 2003. He however continued working until the 28th of February 2003. He then lodged a constructive dismissal dispute with the Commission for Conciliation Mediation and Arbitration (the CCMA) about 3 (three) months later on the 28th May 2003.
- [4] Because the referral of the dispute to the CCMA was late the applicant had to apply for condonation. In his application for condonation the applicant contended that he was late because he was not aware of his rights and that he was overlooked for training and promotion on the basis that he was regarded as over qualified.
- [5] The second respondent dismissed the condonation application on the 1st October 2003. On the 3rd March 2005, in the review proceedings which came before this court under case number JR7224, the applicant contended that the CCMA recorded an incorrect date on his LRA form 711. This contention was not raised on the papers but at the review application hearing itself. It was upon this submission that the court referred the matter back to the CCMA for arbitration.
- [6] The matter was then arbitrated by the second respondent, commissioner Phala on the 6th June 2005. In the arbitration

hearing the applicant testified that the main reason for claiming constructive dismissal was that he applied for a post which was not given to him but he believed he qualified for it. The other reason he put forward for claiming constructive dismissal was that he felt that his manager, Mr Moodley trained staff according to colour. He further stated that there were other reasons which he may put forward during that hearing. The applicant's claim that he was constructively dismissed was dismissed in the arbitration award of the second respondent dated 17th June 2005.

- [7] The applicant challenged the outcome of commissioner Phala's award on review under case number JR1596/05 and after setting out in his founding affidavit the background to the facts, it would appear that his grounds for review are those set out under the heading:

***“PROHIBITION OF UNFAIR DISCRIMINATION ON
GROUNDS OF RACE”.***

- [8] The applicant then proceeded to state the grounds of review as follows:

“Subject to section 6, no person may unfairly discriminate against any person on grounds of race including-discrimination, of propaganda or idea, which pronounced

*the racial superiority on inferiority on any person including-
incitement or participation in any form of racial violence.*

*All the above acts Mr Moodley ignored them and he applied
his misconduct actions and made continued employment
conditions intolerable. Mr Phala who was a commissioner
dismissed this matter on vague and unsubstantive grounds
like he did on the condonation application which he
dismissed on the same grounds. The application was
reviewed and set aside by Acting Justice Broster on the
03/03/05 and referred it back to the ccma for determination
with no order as to costs”.*

[9] During the cause of presenting his argument the applicant made certain serious allegations against the conduct of the commissioner Phala. When called upon by this court to explain these allegations, the applicant suddenly indicated that he was not feeling well and requested leave to go to the toilet. He later conceded that the allegations against commissioner Phala, were unfounded and that he had written a letter withdrawing them and apologising.

[10] As indicated earlier the applicant's review application was dismissed on the 21st September 2007 by this court. On the 8th October 2007, the applicant filed his application for leave to

appeal against the said order. He was then on the 7th November 2007, directed to file further grounds for leave to appeal by the 14th November 2007. The matter was set down without the applicant ever filing the transcribed judgment or any further grounds for leave to appeal.

Grounds for leave to appeal

[11] The applicant has raised 9 (nine) grounds for leave to appeal. The first ground of appeal is based on the contention that this court permitted the respondent's attorneys to base their review on the outcome of case number JR722/04, which concerned the condonation ruling, which was reviewed and set aside by Broster AJ. The applicant further indicated under the same ground that he will uplift the file under case number JR722/04 to check the original documents which exercise he will perform before the hearing of this appeal.

[12] The second ground of leave for appeal is in essence the same as the first. The third ground of leave to appeal which is interlinked to the first and the second is that this court did not review case number JR1596/05, but instead considered an "*appeal of case number JR722/04*".

[13] The rest of the grounds of leave to appeal relates to the background history of the case of the applicant. In this regard the applicant

states that during August/ September 2002, he approached one of his managers, Mr Moodley (Moodley) and complained to him about the attitude and behaviour of his fellow employee, a certain Steven. He complained that instead of addressing the issue, Moodley, simply told him that Steven was short tempered. When he asked him about his own temper Moodley continued with his work and disregarded him.

[14] The applicant then continues to relate what happened during October 2002. During this period he lodged a grievance with the IR manager and instead of it being addressed his position was suddenly “*changed without training*”.

[15] In the same paragraph where the issue concerning the grievance and the change in his position are raised the applicant raises the issue concerning the loss of a blood specimen. This specimen according to him was not supposed to have gone to the receiving stores but to the main receiving. Arising from this a disciplinary action was instituted against him but was found not guilty.

[16] The applicant lodged another grievance subsequent to not being found guilty concerning the missing of the blood specimen. He requested that either he or Steven be moved from that branch. Instead of one of them being moved from the branch, Steven was appointed to stores where he worked closely with him.

[17] The applicant further complains that despite there being posts which were on the same level as his and for which he applied for he was unsuccessful. He also states that Steven was chosen above him for a position of a stock controller which he could do better than him because he had been given a better training by the person who had occupied that position.

[18] The applicant further states that after assuming his duties during January 2003, Steven was found by a supervisor repairing his car during working hours. It would appear that Steven received a warning for this conduct. He further states that a week after these incident someone overheard him (it would appear that it was Steven) asking his supervisor permission to go to a supermarket to purchase scones. Steven then sent an email to Moodley stating that the applicant was allowed to go and buy motor spares.

[19] It would again appear that the applicant complained to the supervisor about the email which was sent to Moodley regarding the purchase of motor spares. The response from the supervisor seem to have been that the applicant had no option but to talk to Steven because the 2 (two) were working together.

[20] The applicant states that on the 31st January 2003, which was a Friday he received TB items from a supplier and it would appear that the person who was responsible for receipt of this item was

Steven who on that day was not at his work station. The following Monday the applicant was approach by Steven and enquired about the where about of the said items. The applicant respondent by informing him that he did not know where they were. Steven apparently got offended by this response and started insulting the applicant and also informing him that he was not scared of him. It was for this reason that the applicant decided to resign.

[21] The applicant further contended under ground 8 (eight) of leave to appeal contended that commissioner Phala “*twisted most of the evidence*” and did not know the difference between Steven and himself. In the last ground of leave to appeal the applicant contended that the court erred by not considering his grounds for review.

[22] In terms of Section 166 (1) of the Labour Relations Act 66 of 1995 (the Act) an appeal lies for judgment of the Labour Court to the Labour Appeal Court with leave of the Labour Court. The test to be applied in deciding whether leave to appeal should be granted is, whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me.

[23] In the first instance the applicant's leave to appeal stands to be dismissed on the ground of non compliance with the rules in that he did not transcribe the judgment of the court. Rule 9 (5) provides as follows:

(5) "The notice of appeal must, in addition, contain a notice calling upon the responsible person ...whose decision is under appeal, to provide a written record of the proceedings, and the reasons for the decision, within 15 days of the delivery of the notice of appeal.

(5A) (a) the person or body upon whom a notice of appeal in terms of sub rule (3) is served must timeously comply with the direction in the notice of appeal.

(a)

(b)

(c)

(d) The appellant must furnish the registrar and each of the parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person.

[24] There is secondly no merit in the applicant's ground for review and including leave to appeal. The commissioner in considering the constructive dismissal dispute filed by the applicant applied his mind and arrived at a decision which is reasonable. It is not a decision which a reasonable decision maker could not have reached.

[25] In the circumstances of this case I am not convinced that another court may come to a different conclusion from that reached by me. The circumstance of the case also dictates the costs should in law and fairness be granted against the applicant.

[26] In the circumstances I make the following order:

1. The applicant for leave to appeal is dismissed.
2. The applicant is to pay the costs of the respondent.

Molahlehi J

Date of Hearing: 31 March 2008

Date of Judgement: 21 July 2008

APPEARANCES:

For the Applicant: MR R S MOKATSANE (in person)

For the Respondent: ADV R M M TOLOBISA

Instructed by: HOFMEYR HERBSTEIN