

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D 663/05

Not Reportable

5 In the matter between:

THAMINDRAN CHETTY

Applicant

and

RUSTENBURG PLATINUM MINES LTD

1st Respondent

HLALELE MOLOTSI N.O

2nd Respondent

10 COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

3rd Respondent

JUDGMENT

17 JUNE 2008

PILLAY D, J This is an application for leave to appeal against a judgment of

15 the Court granted ex-tempore on 4 December 2007.

Since *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC) the review of decisions of commissioners is more the exception than the rule. As Mr Myburgh points out, to date, there is not a single reported decision of the Labour Appeal Court in which a decision of a commissioner has been overturned. This Court's recollection of its own judgments is that few reviews succeed. In essence, therefore, the setting aside of a decision of a commissioner is rare following *Sidumo*.

In this case, however, an exceptional situation arose because the Court found that the first respondent did not litigate honourably.

25 When making an interim ruling earlier in the proceedings on that

day, the Court had found that the parties were disposed to postponing the matter. However, in dealing with the substantive issues following the interim ruling, the Court found that the respondent had not litigated honourably. The basis for this finding was that the first respondent persisted in denying that it had been disposed to postponing the matter. By that stage of the proceedings the Court's earlier finding that the parties had been disposed to postponement strengthened to a finding that the parties had in fact agreed to a postponement. For that reason the Court found that the respondent had not litigated honourably in the proceedings before the CCMA.

10 A finding that a party has not acted honourably, particularly where that party is a public company, is a serious indictment. Another Court may on the same facts draw a different inference. For that reason alone the application for leave to appeal should be granted.

15 A further reason for granting the appeal is that, as stated earlier, the review of decisions of commissioners is exceptional following *Sidumo*.

20 With regard to the cross-appeal, the Court declined to allow oral evidence because it had found in favour of the applicant employee that there had been agreement to postpone the matter and that the respondent had acted dishonourably; hence the reason for leading oral evidence had fallen away. To lead oral evidence in review proceedings is extraordinary. In any case, by the time the matter had reached this Court, and in the light of the discussions at the hearing, the issues had reached a stage where oral evidence seemed pointless. These developments might not have been before Acting Justice Broster when he directed that the parties should refer an aspect of the dispute for oral evidence. In the circumstances the first

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ground of the cross-appeal must fail.

Given that the Court has a discretion as far as costs in labour matters are concerned, it exercised its discretion not to award any costs.

The cross-appeal on these two grounds must therefore fail.

5 In the circumstances the Court GRANTS LEAVE TO APPEAL TO THE APPELLANT EMPLOYER WITH COSTS BEING COSTS IN THE APPEAL.

THE COURT DISMISSES THE CROSS APPEAL WITH COSTS.

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Pillay D, J

15 Date: 24 October 2008

APPEARANCES:

20 For the Applicant: Adv Myburgh instructed by Leppan Beech Inc

For the Respondent: Adv Crampton instructed by Tomlinson Mnguni Jame

