

REPUBLIC OF SOUTH AFRICA**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****JUDGMENT**

Not Reportable

Case no: JS 877/10

In the matter between:

INGRID MARY-BETH CARPEDE**Applicant**

and

LG ELECTRONICS SA (PTY) LTD**Respondent****Decided : In Chambers****Judgment : 19 March 2013****Summary : Application for leave to appeal dismissed with costs.**

JUDGMENT

AC BASSON J

- [1] This was an application for leave to appeal against my order dismissing the condonation application with no order as to costs.

[2] The grounds for leave to appeal as set out in the application are difficult to understand. However, it appears that the appeal is based on the following two issues. Firstly, the court erred in finding that the applicant was required to apply for condonation and secondly, the court erred in finding that the applicant had failed to tender a proper explanation for the delay. In respect of the first issue, it is clear that the applicant had to apply for condonation. I should also point out that even the condonation application was late and that no explanation for the lateness thereof was tendered. In respect of the second ground: The applicant did not tender a proper explanation for the delay and I am of the view that there is no prospect of an appeal court interfering with the exercise of a true discretion on very limited grounds.

[3] The test for granting of leave to appeal was clearly laid out by the Supreme Court in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A):

“The jurisdictional requirements for a civil appeal emanating from a Provincial or Local Division sitting as a Court of first instance are twofold:

(1) the decision appealed against must be a 'judgment or order' within the meaning of those words in the context of s 20(1) of the Act; and

(2) the necessary leave to appeal must have been granted, either by the Court of first instance, or, where leave was refused by it, by this Court. Leave is granted if there are reasonable prospects of success. So much is trite. But, if the judgment or order sought to be appealed against does not dispose of all the issues between the parties the balance of convenience must, in addition, favour a piecemeal consideration of the case. In other words, the test is then 'whether the appeal - if leave were given - would lead to a just and reasonably prompt resolution of the real issue between the parties'

(per Colman J in Swartzberg v Barclays National Bank Ltd 1975 (3) SA 515 (W) at 518B).”

[4] I have considered the matter and I am in agreement with the respondent that there are no prospects of success on appeal. It is trite that the doctrine of *vigilantibus non dormientibus lex subvenit*¹ has been accepted by our courts and is an accepted and established doctrine in our law and especially in the labour law sphere. Furthermore, the condonation application itself was late and no reasons were provided in that respect.

¹ *Mkhize v Tanker Services (Pty) Ltd* (1993) 14 ILJ 688 (LAC):

[5] I have therefore concluded that there are simply no reasonable prospects that another court would come to a different conclusion. In respect of costs, I am of the view that costs should follow the result.

[6] In the event the following order is made:

6.1 The application for leave to appeal is dismissed with costs.

AC BASSON J
Judge of the Labour Court