

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

Not reportable

Case no: J 579/11

In the matter between:

PROFFESSOR SOLEY J.T**First Applicant****DR VAN STADEN S.L****Second Applicant****PROFFESSOR BOOTH K****Third Applicant****(Respondents in the
application for leave to
appeal)**

and

UNIVERSITY OF PRETORIA**First Respondent****PROFESSOR MADEKUROZWA****Second Respondent**

**(Applicants in the application
for leave to appeal)**

Decided : In Chambers

Judgment : 20 March 2013

Summary : Interlocutory applications: Application to stay; Application for leave to amend the response to the statement of claim and the application for an order to enrol matter for hearing in terms of Rule 6(5)(a) of the Rules of the Labour Court. Application for leave to appeal dismissed. Interlocutory orders are not appealable.

JUDGMENT

AC BASSON J

- [1] This is an application for leave to appeal by the respondent (the University of Pretoria) against my judgment handed down on 24 December 2013. For purposes of this brief judgment I will continue to refer to the parties as “the University” and “the Professors”). The second respondent (“Professor Madekurozwa”) is not a party to this application.
- [2] I do not intend for purposes of this brief judgment to repeat my findings nor to summarise the comprehensive and lengthy written submissions submitted to the Court in this application for leave to appeal. Suffice to point out that I have studied the submissions submitted by Mr Freund SC on behalf of the University and those submitted by Mr Grogan SC on behalf of the Professors.

- [3] I am in agreement with Mr Grogan SC on behalf of the Professors that there are two grounds on which this application can be disposed of: (i) Firstly, despite the lengthy arguments submitted by Mr Freund on behalf of the University, I am of the view that these orders are not appealable. (ii) Secondly, the application for leave to amend was premature.
- [4] I am in agreement that it is trite law that interlocutory rulings are generally not appealable unless they satisfy three criteria: (i) Firstly, they are final in effect and not susceptible to alteration by the court of first instance (in this case the Labour Court); (i) Secondly they are definitive of the rights of the parties and (iii) Thirdly, they have the effect of disposing of at least a substantial portion of the relief (or defence) claimed in the main proceedings.¹
- [5] Briefly, in respect of the order dismissing the application to stay, I am of the view that this order does not satisfy any of the three criteria referred to. The order dismissing the application to stay is not dispositive of any of the parties' rights nor is this order final in effect. This order merely results in the trial running its normal course. Furthermore, this Court has exclusive jurisdiction of the claim referred to it and the University does not take issue with this finding.
- [6] Secondly, in respect of the order dismissing the application to amend, the order merely orders that the University was not entitled to introduce an amendment *at this juncture* – in other words at the time of the hearing of the application to amend.² This order is likewise not definitive of any of the parties' rights – most notable those of the University. Moreover, nothing

¹ *Guardian National Insurance Co Ltd v Searle NO 1999 (3) SA 296 (SCA).*

² Ad paragraph [40] of the judgment.

prevents the University from seeking the amendment at a later stage *if* and *when* the High Court should ultimately rule that Madekurozwa's disclosure were in fact protected. I am further in agreement with Mr Grogan that this order will also not prevent the University from leading evidence, if it can to prove that Madekurozwa's conduct did not warrant disciplinary action. I am also in agreement that this order does not dispose of any of the relief sought in the main proceedings nor of a substantial portion thereof. The crux of the dispute before the Court as it appears from the papers is that the Professors are seeking relief for unfair discrimination on the basis that the University did nothing up to the time of *litis contestation* to discipline Madekurozwa for accusing them of racism. Furthermore, as already pointed out, this order does not preclude the University from raising the protected disclosure issue if and when it becomes relevant. However, at the time of hearing of this matter, that issue had no relevance. Moreover, the order also does not prevent Madekurozwa from testifying before this Court as and when this matter finally proceeds to trial. The University may even subpoena her to testify if it wishes to do so. I restate: this Court merely held that the alternative defence was premature as the High Court has not yet ruled on that issue. The application to amend is premised on the possibility that a court of competent jurisdiction may yet find that Madekurozwa's claim was made in good faith. This in my view is not a sufficient basis to have granted the application to amend. In any event, this order does not preclude the University from raising this defence at trial. As already pointed out, the order merely has the effect that at the time of this hearing, there was no basis for raising such a defence. This order

certainly does not have the effect of precluding the University from raising the defence should such a defence become available.

[7] Lastly, the applicants have a right to have their dispute resolved with reasonable expedition. It is manifestly in the interest of justice for this matter to be enrolled for trial. In respect of the cost order granted by the Court, I am in agreement with Mr Grogan that a cost order was warranted in light of the fact that the country-application was overwhelmingly successful. In respect of costs in this application, I am of the view that costs should also follow the result.

[8] In the premises the application for leave to appeal is dismissed with costs on the basis that the orders at issue are not appealable.

AC BASSON, J

Judge of the Labour Court

APPEARANCES

For the Applicant : Advocate J G Grogan SC

Instructed by : Du Toit Attorneys

For the respondent : Advocate A J Fruend SC

Instructed by : Anton Bakker Attorneys

LABOUR COURT