



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

CASE NO: J1021/12

In the matter between:

MERAFONG CITY LOCAL MUNICIPALITY

Applicant

And

SOUTH AFRICAN MUNICIPAL WORKERS UNION ("SAMWU")

1st Respondent

VUYISILE PATRICK NQABA

2nd Respondent

in re:

SOUTH AFRICAN MUNICIPAL WORKERS UNION ("SAMWU")

1st Applicant

VUYISILE PATRICK NQABA

2nd Applicant

and

MERAFONG CITY LOCAL MUNICIPALITY

1st Respondent

Delivered: 24 April 2014

LEAVE TO APPEAL JUDGMENT

Lallie J

[1] The applicant seeks leave to appeal against the whole of my judgment dated 10 May 2013. This unopposed application is based on what the applicant referred to as legal and/or factual errors.

[2] The test for leave to appeal is whether another Court might reasonably come to a decision different from the one I reached. In *Lodewicus Andries Michael Kruger v The State*¹ the court confirmed that the test for leave to appeal is whether there is a reasonable prospect of success. The court referred with approval to *S v Smith*² where the test for leave to appeal was expressed as follows:

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of succeed on appeal and that those

¹ Unreported (612/13 [2013] ZA SCA 198 para 2

² 2012 (1) SACR 567 (SCA) para 7

prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal'.

[3] I have considered all eleven grounds the applicant sought to rely on, the submissions on its behalf and my judgment. The determination of this application is neither an opportunity to rewrite my judgment nor to justify it. It requires the application of the relevant test. The submissions which fall outside the relevant test are therefore of no moment. I could find no reason, based on both the facts and the law, for another court to reasonably reach a decision different from the one the applicant seeks leave to appeal against. The applicant therefore has no prospects of success.

[4] In the premises the application for leave to appeal is dismissed.

Lallie J

Judge of the Labour Court

Matter considered in Chambers:

For the Applicant:

Advocate M S M Brassey SC and Advocate M J Engelbrech

Instructed by: De Swardt Vogel Myambo Attorneys