

REPUBLIC OF SOUTH AFRICA



THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not reportable

Case no: P 530/2012

In the matter between:

SIVIWE KLAAS

Applicant

and

STANDARD BANK OF SOUTH AFRICA

First Respondent

THE COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Second Respondent

JACOBUS DU PLESSIS N.O

Third Respondent

Decided : In Chambers

Judgment : 02 October 2014

Summary : Application for leave to appeal, no prospect that another Court could come to a different conclusion, application is dismissed.

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, AJ

[1] This is an application for leave to appeal against a judgment of this Court handed down on 22 July 2014 in terms of which an arbitration award was reviewed and set aside and substituted with an order that the Applicant's (the Third Respondent in the review application) dismissal was substantively and procedurally fair. Leave to appeal is sought against the whole of the judgment and part of the orders granted by the Court.

[2] The Applicant listed various grounds where this Court had erred in its finding. I do not intend to repeat the various grounds, suffices to say that I have considered these grounds. In summary the grounds are that the Court erred in making certain factual findings, erred in failing to correctly apply the test as enunciated in the *Heroldt v Nedbank*¹, erred in not considering the issue of double jeopardy and erred in making certain legal conclusions.

[3] The application is opposed. In summary the First Respondent's submissions are that the Applicant is canvassing a case that was not canvassed during the review proceedings, there was no review filed by the Applicant and the issues before Court were confined to those raised in the review papers, the Court's findings on the facts and law are not appealable and there is no reasonable prospect that the Labour Appeal Court may reach a different conclusion on the grounds for appeal as raised.

The test in the application for leave to appeal

[4] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This is clear from section 166(1) of the Labour Relations Act² (hereinafter referred to as the "the LRA") which provides that any party to any proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the Labour Appeal Court against any final judgment or final order of the Labour Court. In order to be

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² Act 66 of 1995

entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a “*reasonable prospect that another court could come to a different conclusion*”. (See *Woolworths Ltd v Matthews*³.)

[5] The test is not whether or not there is a possibility that another court could come to a different conclusion, the test is whether or not there is a reasonable prospect that another court could come to a different conclusion. In *Westing House Break and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd*⁴ the Court reiterated the general principle that in order for an applicant for leave to appeal to succeed, the applicant must demonstrate that it has a reasonable prospect of success on appeal. It was also stated that an appeal should be allowed where the matter is of great importance or where the matter is of public importance or where the court is of the view that the decision might affect other questions. (See in this regard *Moller v Keimoes School Committee and Another*⁵)

[6] *In casu* and in view of the grounds for appeal raised by the Applicant, I am not convinced that there are any prospects that another court might come to a different conclusion than the one arrived at by this Court.

[7] I am not persuaded that the Applicant has made out a case for leave to appeal, that any of the factors set out *supra* are present or that the Applicant has reasonable prospects of success on appeal and scarce judicial resources should not be spent on an appeal that lacks merit.

[8] The Supreme Court of Appeal in *Zweni v Minister of Law and Order*⁶ held in respect of the jurisdictional requirements for a civil appeal:

“Leave is granted if there are reasonable prospects of success. So much is trite.”

³ [1999] 3 BLLR 288 (LC)

⁴ 1986 (2) SA 555 (A)

⁵ [1911] AD 585)

⁶ 1993 (1) SA 523 (A).

[9] The Supreme Court of Appeal held in *Dexgroup (Pty) Ltd v Trustco Group*⁷ that:

” The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.”

[10] Having found that the Applicant has not made out a case for the granting of the leave to appeal and that he has no prospects of success on appeal, I make the following order:

10.1 The application for leave to appeal is dismissed.

20.2 There is no order as to costs.

Prinsloo, AJ

Acting Judge of the Labour Court

⁷ Unreported judgment of the Supreme Court of Appeal (687/12) [2013] ZASCA 120 (20 September 2013).