



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 2969/10

In the matter between:

DRS HAAGENSEN & LURIE INC

Applicant

And

**THE COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

**COMMISSIONER MOAHLOLI NYAMA (Cited in
his capacity as Commissioner of the Commission
for Conciliation and Arbitration)**

Second Respondent

MADELEIN CLOETE

Third Respondent

PHALA MOTLATSI N.O.

Fourth Respondent

Delivered: 19 May 2015

Dealt with in chambers

JUDGMENT FOR LEAVE TO APPEAL

MOLAHLEHI, J

- [1] This is an application for leave to appeal against the judgment of this Court made on 7 February 2014, in terms of which the applicant's review application was dismissed with costs.
- [2] The notice of leave to appeal was filed on 28 February 2015 which in my calculation was 7 days late. The notice was filed in the Registrar's office and no copy was filed with my secretary as provided for in directive 15.1 of the Practice Manual.
- [3] The application came to the attention of my secretary and to me during February 2015. At that state the 10 days within which the applicant was required to file the submissions in terms of directive 15.2 of the Practice Manual had also lapsed.
- [4] In light of the above the applicant was issued with a directive during March 2015 to file its submission to substantiate the grounds for leave to appeal. This submission was made on 10 March 2015.
- [5] The application is unopposed. Although the applicant has not applied for condonation for the late filing of the leave to appeal, I have decided to condone the late filing of the leave to appeal and consider the merits of the application.
- [6] As it would appear from the judgment there were two arbitration awards which were initially subject of the review. The first arbitration award had to do with the issue of whether the CCMA had jurisdiction in light of a settlement agreement that had been concluded by the parties. The Commissioner found in that arbitration award that there was a dismissal, and accordingly the CCMA had jurisdiction to consider the dispute.
- [7] The applicant having failed to cite the Commissioner who ruled that the CCMA had jurisdiction was then required to file a joinder which the third respondent initially opposed. After the third respondent consented to the joinder the applicant was required to have that finalized but failed to do so. This meant that the Commissioner was still not joined when this matter served before this Court. The issue of non-joinder of the first Commissioner was pertinently raised with Mr Levin representing the applicant at the beginning of the hearing. He indicated very clearly

that the applicant was no longer pursuing the review of the ruling which found that the CCMA had jurisdiction to entertain the dispute.

- [8] In the leave to appeal, the applicant contends that the second Commissioner was obliged to consider the issue of jurisdiction despite the ruling that had already been made regarding the same.
- [9] The other point raised by the applicant is that the arbitrator still needed to determine the fairness of the dismissal taking into account the fact that the termination of the employment was by agreement between the parties.
- [10] In considering whether to grant or refuse leave to appeal, I am enjoined to determine whether there are reasonable prospects that another Court having regard to the same material that served before this Court is likely to arrive at a different conclusion.
- [11] I am not persuaded having regard to the applicant's submission and my judgment that there are prospects that another Court could arrive at a conclusion different to the one reached by this Court.
- [12] In the circumstances, I find that the applicant has failed to make out a case for leave to appeal to the Labour Appeal Court.

Order

- [13] In the premises, the applicant's application for appeal to the Labour Appeal Court is dismissed with no order as to costs.

Molahlehi, E

Judge of the Labour Court, South Africa.