



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Not of interest to other judges

Case no: JR3054/2012

In the matter between

MORAPENG a'AFRIKA LEISURE (Pty) Ltd

Appellant

And

KHATHUTSHELO NENGONDENI

First Respondent

Commissioner THEMBA HLATSWAYO

Second Respondent

CCMA

Third Respondent

Application: 3 June 2015

Delivered: 7 August 2015

APPLICATION FOR LEAVE TO APPEAL

COETZEE AJ

- [1] The Appellant is Morapeng a'Afrika Leisure (Pty).
- [2] The First Respondent is Kathutshelo Ngongeni ("the Respondent")
- [3] The Applicant applied to Court to review and set aside an arbitration award in terms whereof the dismissal of the Respondent was found to be unfair and he was consequently reinstated.
- [4] The parties informed the Court that the Court should exercise a discretion in the granting of compensation should the Court be inclined to review and set aside part of the award but found that the dismissal was procedurally unfair.
- [5] After hearing the parties the following order was made:
- 'ORDER
- 1 The Arbitration award dated 6 December 2012 made by the Second Respondent under CCMA case number GAJB21941/2012 is set aside.
 - 2 The findings of the Second Respondent are substituted with a finding that the dismissal of the First Respondent was substantively fair but procedurally unfair.
 - 3 The Applicant must pay the First Respondent a total amount of R54 072.45 within fourteen days of this order.

4 There is no order as to costs.'

[6] The Applicant applied for leave to appeal against paragraphs three and four of the order.

[7] The Applicant and the First Respondent filed written submissions which were considered in chambers.

[8] Section 17 of the Superior Courts Act, No 10 of 2013 regulates an application for leave to appeal from a decision of a High Court. It reads as follows:

'17. Leave to appeal.—

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties'.

[9] This section also applies to applications for leave to appeal in the Labour Court.¹

[10] The grounds for leave to appeal do not have a reasonable prospect of success. There is no compelling reason an appeal should be heard.

[11] The following order is made:

1 The application for leave to appeal is dismissed.

2 The Applicant is ordered to pay the costs of the application for leave to appeal.

¹ Section 151 of the Labour Relations Act, Act 66 of 1995

Coetzee AJ

Acting judge of the Labour Court of South Africa

APPEARANCES:

For the applicant: No appearance - In chambers

Instructed by: Patrick O'Donovan

For the First Respondent: No appearance - In chambers

Instructed by: Nkosi Ntlantla Inc

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LABOUR COURT