



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Not Reportable
Case no: JS 319/08

In the matter between:

NUMSA obo MOGALE J & 16
Others

Applicants

And

THREE GEES CALVISING CC
GALVADIP (PTY) LTD

First Respondent

Second Respondent

Delivered: 17 August 2015

Matter considered in chambers

JUDGMENT

MOLAHLEHI, J

- [1] This is an application for leave to appeal against the judgment of this Court made on 30 April 2014 in terms of which the dismissal of the applicants (“the employees”) was found to have been unfair. The second

respondent was accordingly ordered to compensate the applicants for that reason. The judgment was made in default of the second respondent failing to comply with the order made by Basson J on 3 February 2014. Basson J's order was never set aside either on the basis of rescission or appeal.

- [2] The second respondent in its challenge to the judgment of this Court has raised several grounds of leave to appeal. I do not intend repeating the same in the present judgment. The issue which this Court needs to deal with is whether there are reasonable prospects that another Court faced with the same facts would have arrived at a different conclusion.
- [3] The key issue raised by the respondents in their application for leave to appeal, has to do with the question of jurisdiction. In this respect the respondents contend that the applicants were never employed by the second respondent and that issue ought to have been determined first before considering the application for the default judgment.
- [4] This issue has to do with whether the court had jurisdiction to entertain the application for default judgment, without firstly determining whether the applicants were employees. I am in agreement with the respondents that another court may find that this court would have arrived at a different conclusion had it determined the issue of whether or not the applicants were employed by the second respondent.
- [5] In light of the above I am satisfied that the respondents have made out a case for leave to appeal to the Labour Appeal Court.

Order

- [6] The respondents are granted leave to appeal to the Labour Appeal with no order as to costs.

Molahlehi J
Judge of the Labour Court of South Africa

