



IN THE LABOUR COURT OF SOUTH AFRICA JOHANNESBURG

JUDGMENT

Not Reportable

Case No: JS 387/08

In the matter between:

F BREDENKAMP

APPLICANT

and

TSHWANE UNIVERSITY OF TECHNOLOGY

RESPONDENT

Heard: 04 June 2014

Delivered: 20 August 2015

JUDGEMENT ON LEAVE TO APPEAL

SHAI AJ

Introduction

[1] On the 8 October 2014 I issued a judgement in the following terms:

“

a. The application of the condonation of the state filing of the Applicant is dismissed with costs.”

The Applicant has now applied for leave to appeal against the whole judgement.

[2] The application is opposed by the Respondent

- [3] In addition to the application to appeal against the whole judgement the Applicant applies for leave to file a supplementary affidavit.

Application for leave to file a supplementary affidavit

- [4] In the judgment referred to in paragraph 1 above I had ruled that the said supplementary affidavit was not properly before the Court and did not form part of the pleadings. The reason was that no proper application was made for its admission. As it stands only the affidavit in support of the 'application' has been filed. It is not accompanied by a notice as it is required. The 'application' is therefore not properly before the court. Secondly the Court had already made a decision on the same document which is subject of application for leave to appeal. On the basis of the above the Court is inclined not to grant leave to file a supplementary affidavit.

Leave to appeal against the whole judgement

- [5] The grounds of application for leave to appeal are stated as follows:

- "1. The learned Judge erred in not granting Condonation to Applicant for the filing of the statement of case on 12 June 2008; a different court may reasonably come to a different finding and grant condonation to the Applicant.*
- 2. The learned judge erred in finding that the Statement of Case was only filed with the Labour Court on 12 August 2008 whereas it was in fact with the Court on 12 June 2008.*
- 3. Regarding the status of the application of the Condonation attached to the Statement of Case, the learned Judge erred in finding that it was filed on 24 August 2008 whereas it was in fact filed with the statement of Case on 12 June 2008.*
- 4. The learned Judge erred in stating that the Affidavit in respect of Condonation was not numbered whereas it was attached to the Statement of Case which in fact has a case number.*
- 5. The learned Judge erred in finding that an application for Condonation should comply with the requirements for applications in terms of Rule 7 of the Labour Court Rules whereas it is trite law that such applications can*

by way of affidavit be attached to statement of case or a response thereto.

6. *The learned Judge erred in finding that the application for Condonation was approximately 27 months late whereas it was in fact only filed five weeks late on 12 June 2008 instead of 4 May 2008.*
7. *The learned Judge erred in finding that the period of 27 months was unexplained and excessive whereas the real period of delay was only five weeks which was fully explained in the first Affidavit for Condonation, dated 11 June 2008, paragraphs 3-6.(a vacancy existed)*
8. *The learned Judge erred in finding that the prospects of success of the Applicant are not good whereas from his supplementary affidavit it appears that no substantive fairness (not appointed in a vacancy) nor procedural fairness (no consultations) were meted out to him. An application for leave to file this supplementary affidavit accompanies this application for leave to appeal.*
9. *The learned Judge erred in finding that the answering affidavit of Respondent objecting to the Applicant's application for Condonation, was only 12 days late whereas it was in fact 28 months late, i.e. from 12 June 2008 until 7 September 2010.*
10. *The learned Judge erred in finding that there was a plausible explanation for the lateness whereas there was only an explanation for the irrelevant "12 days" but no explanation for the remaining 27 months and consequently the Condonation application of the Respondent was erroneously granted.*
11. *The learned Judge erred in finding that the Respondent will suffer more prejudice than the Applicant if not granted the opportunity to defend the claim whereas the opposite represents in reality the true position factually. If it was found that prejudice favours the Applicant, the Respondent would still have the opportunity to defend the claim of the Applicant whereas the opposite is not true.*
12. *The learned judge erred also in finding that the Respondent's prospects of success are good whereas the dismissal of the Applicant, as indicated above, was neither substantively (a vacancy existed), nor procedurally fair (no consultations)".*

The test applicable in application for leave to appeal

- [6] The test in the application for leave to appeal was stated as follows in the case of *Van der Merwe v Du Plessis*, (1999) 20 ILJ 1305 LC paragraph 4 at 1306:

‘Leave to appeal is granted only if this Court is satisfied that another Court might reasonably reach a conclusion different from that appealed against.’

- [7] In *National Union of Metal Workers of SA v Jumbo Products CC* 1996 (4) SA 735 SCA at 742 A-B the Supreme Court of Appeal described the test as one based on whether there is a reasonable prospect that a court of Appeal may come to a different conclusion and held the trial judge to have been wrong.

- [8] Having read the submissions from both parties and the judgement herein, and having applied my mind thereon, and taking the principles outlined above into account, I am satisfied that another court may not reasonably come to a different conclusion than the one this court reached.

- [9] In the premise I make the following order:-

- a) The application for leave to file a supplementary affidavit is dismissed with costs.
- b) The application for leave to appeal against the whole judgement is dismissed with costs.

Shai AJ

Judge of the Labour Court of South Africa

APPEARANCES: Adv Fanie van Jaarsveld

FOR THE APPLICANT: Van de Merwe Associates

FOR THE RESPONDENTS: Adv Hein Gerber

Instructed by: Glarinda Kügel Attorneys

LABOUR COURT