



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 724/2014

In the matter between:

KABELO MOTENE

Applicant

and

**PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL**

First Respondent

COMMISSIONER J MPHAPHULI N.O.

Second Respondent

**DEPARTMENT OF HEALTH (NORTH WEST
PROVINCE)**

Third Respondent

Delivered: 9 September 2015

ORDER AND REASONS IN THE APPLICATION FOR LEAVE TO APPEAL

FOURIE AJ

Order

[1] I make the following order:

- 1.1 The application for leave to appeal is dismissed with costs.

Reasons for order

[2] On 9 July 2015, in an *ex tempore* judgment, I dismissed an application to review and set aside an arbitration award in which the second respondent (the arbitrator) issued a preliminary ruling in terms of which he ruled that the third respondent could lead evidence of the charges proffered against the applicant during pre-dismissal arbitration proceedings (that were abandoned by the employer), in order to prove the fairness of the applicant's dismissal.

[3] The applicant seeks leave to appeal to the Labour Appeal Court against the whole of the judgment and order.

[4] Having considered the grounds put forward in the application for leave to appeal, I am not satisfied that there are reasonable prospects of another court reaching a different conclusion, for the following reasons:

4.1 The Labour Relations Act encourages the speedy resolution of labour disputes. Recent amendments serve to further advance this goal, which in practice is often not achieved, sometimes due to systemic delay, and sometimes (as in the present litigation) due to tactical piecemeal objections, review applications and the like.

4.2 Particularly in the case of individual dismissal disputes, the courts have made it clear that disputes must be finalised speedily, and that delays will not easily be condoned. See for example, *Queenstown Fuel Distributors CC v Labuschagne NO & others* (2000) 21 ILJ 166 (LAC).

4.3 The effect of the order is that the applicant remains entitled to exercise his statutory rights to challenge the fairness of his dismissal at arbitration. No doubt the decision by the third respondent to abandon the pre-dismissal arbitration proceedings and to dismiss the applicant in a peremptory fashion will be subjected to scrutiny during the arbitration proceedings. But the true reason for the dismissal was clearly the employer's belief that the employee had been involved in fraudulent procurement activities, and it is clearly in the public interest that this dispute be aired in the CCMA arbitration.

4.4 The courts are generally loathe to entertain piecemeal reviews in arbitration proceedings.

4.5 The award of costs is a matter of judicial discretion, which a court sitting on appeal would only interfere with in exceptional instances where the discretion was exercised capriciously. I do not believe that the punitive costs order that I made falls in this category.

[5] For these reasons, the application for leave to appeal is refused, with costs.

GA Fourie

Acting Judge of the Labour Court of South Africa