



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 3053/12

In the matter between:

PRASA

Applicant

and

UTATU

First Respondent

TOKISO

Second Respondent

FRANS STASSEN N.O

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 7 July 2015, in an *ex tempore* judgment, I upheld an application to review and set aside an arbitration award in which the third respondent (the arbitrator) held that the dismissal of the employee (represented herein by his trade union, UTATU), was unfair. I replaced it with an award that his dismissal was fair.

[3] UTATU now 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 Counsel for UTATU, Advocate Wayne Hutchinson, conceded during argument that the award was subject to be reviewed on the merits. His sole argument was that, based on the SCA decision in *Edcon v Pillemer*, I should not interfere with the sanction. I dealt with this in some detail in the *ex tempore* judgment.

4.2 The application for leave to appeal is framed in wide and general terms, and is not limited to this issue, and no explanation is provided for the change in course. While I accept that a party is not bound by concessions erroneously made by counsel, in my view the concession was properly made on the evidence. The case was simply unarguable, and counsel wisely abandoned what was beyond salvage and focused his attention on the only real point available to him.

4.3 The application for leave to appeal mentions that reasons

were requested for the judgment, and that UTATU reserves the right to amplify the grounds of appeal in due course, once reasons have been received. This approach is misguided, for several reasons: A full judgment (albeit *ex tempore*) was handed down in the presence of the parties on 7 July 2015. The *dies* for applying for leave to appeal commence at that point – see Rule 30(2) of the Labour Court Rules. No further request for reasons would be proper – to my knowledge, none was made in any event.

4.4 In my view, the prospects of another court reaching a different conclusion on the merits are remote.

4.5 The application for leave to appeal was brought out of time, with no application for condonation. Given my view of the prospects, this is simply another reason to refuse leave to appeal.

[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