



**THE LABOUR COURT OF SOUTH AFRICA,
IN JOHANNESBURG**

Of interest to other judges

CASE NO: JR 2296/12

In the matter between:

**BAFOKENG RASIMONE PLATINUM
MINE (PTY) LTD**

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

**COMMISSIONER MASHOODA PATEL
(N.O.)**

Second Respondent

RYK BOTHA

Third Respondent

JUDGMENT ON LEAVE TO APPEAL

LAGRANGE, J

[1] The applicant in this matter has applied for leave to appeal against the judgment handed down on 8 July 2015. The Court found in favour of the applicant and set aside the arbitration award that was the subject matter of the review. The matter was remitted back to the CCMA for a hearing on the following basis, as set out in the order:

1.1 Within 30 calendar days of receipt of this judgment, the first respondent must set down the matter for hearing before a commissioner other than the second respondent to consider the matter afresh on the basis of the record in the first arbitration hearing, including the emails referred to as B1, B2 and B3 on page 26 of the typed transcript of the arbitration hearing, which were missing from the record placed before the Court, and after hearing the evidence of Mr A Mbuli and any evidence the second respondent may wish to lead in rebuttal thereof.

1.2 The applicant's 'additional affidavit' filed on 12 July 2013 is not admitted as part of the record in the review proceedings.

1.3 The parties must pay their own costs in the review save that the applicant must pay the third respondent's costs of opposing the admission of the affidavit on an attorney own client scale.

[2] Apart from the grounds which the Court found justified reviewing and setting aside the award, the applicant wishes to appeal against the judgement on the basis that the Court ought to have also accepted other grounds of review which I considered but rejected. I do not intend to repeat the reasons why those grounds were found wanting. In any event, even if I had erred in any material respect on those subsidiary findings, a finding to the contrary on appeal would not alter the result of the judgement, namely that the award was reviewed and set aside. In this regard, it is apposite to reiterate the principle that an appeal is against the result and not against the reasons given by a Court for its order, viz:

“... an appeal lies against the order made by a court rather than its reasons for doing so.”¹

- [3] The only sense in which the Court’s original findings could affect the order made is whether the Court ought to have ordered a full hearing *de novo*. The only ground of appeal relied upon by the applicant to argue that the Court should have made such an order relates to the Court’s finding about the alleged bias of the arbitrator for not disclosing a suspected, but unsubstantiated, close friendship between the arbitrator and the third respondent’s representative. Having considered the reasons for rejecting a claim of bias in my judgment, I see no reasonable prospect another Court might reach a different conclusion. Consequently this ground of appeal must fail.
- [4] The applicant also wishes to appeal the refusal of the Court to admit its ‘additional affidavit’ and the attendant attorney-own client cost award made in favour of the third respondent in respect of his opposition to its admission. Once again, considering the grounds raised, it is improbable in my view that another Court reconsidering the admission of that document would agree to its admission given the complete absence of any acceptable justification why the additional issues it wished to raise were not dealt with in its supplementary affidavit. Quite apart from the fact that the cost award is a discretionary matter, the applicant has provided no reason why the respondent should have been out of pocket in opposing such a meretricious step.
- [5] In respect of the application to appeal against the failure to award costs in favour of the applicant despite its overall success I am not persuaded that another Court might be persuaded that the interests of justice and fairness warrant a different order, taking into account all the circumstances of the matter including the fact that the final determination of the fairness of the third respondent’s dismissal still has to be decided.

¹ *Defy Ltd v Commissioner, South African Revenue Service* 2010 (5) SA 416 (SCA) at 427, para [48] and see also *Edcon v Steenkamp, And Related Matters* 2015 (4) SA 247 (LAC) at 269, para [70].

Order

[6] The application for leave to appeal is dismissed with costs.



R LAGRANGE, J

Judge of the Labour Court

(In Chambers)

12 October 2015

LABOUR COURT