



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG.

JUDGMENT

Not Reportable

Case no: J969/2015

In the matter between:

POPCRU obo ASHONDOLF

Applicants

and

**NATIONAL COMMISSIONER, SOUTH
AFRICAN POLICE SERVICES**

First Respondent

**PROVINCIAL COMMISSIONER, SAPS
GAUTENG**

Second Respondent

MINISTER OF POLICE

Third Respondent

Decided in Chambers

Delivered on: 16 October 2015

RULING - LEAVE TO APPEAL

TLHOTLHALEMAJE, AJ

Introduction:

- [1] This is an application for leave to appeal against the whole of the judgment that was handed down on 19 June 2015 wherein I had dismissed the Applicants' urgent application in favour of the Respondents. The Respondents had filed a Notice to Oppose the application, but thus far, no further submissions were received in that regard.

Grounds upon which leave to appeal is sought:

- [2] The Applicants relied on the following specific grounds in seeking leave to appeal, i.e.;

- 2.1 That in having acknowledged that the suspension of Ashondolf was a precautionary measure, the Court nevertheless erred by failing to have regard to and apply the binding dictum found in *POPCRU obo Sephanda v Provincial Commissioner: SAPS Gauteng Province*¹;
- 2.2 That the Court erred in finding that the Second Respondent was justified in placing Ashondolf on suspension in accordance with Regulation 13 (2) of the SAPS Disciplinary Regulations;
- 2.3 The Court erred in finding that Ashondolf could have approached the appropriate Bargaining Council with an unfair labour practice dispute as an alternative to approaching the urgent court for a review

The legal framework and evaluation:

- [3] It is trite that the test for determining whether to grant an application for leave to appeal is whether there are reasonable prospects that another Court (on appeal) may come to a different conclusion as reached by the Court *a quo*. This test is described by Corbett CJ in *National Union of Metal Workers of South Africa v Jumbo Products CC*² in the following terms:

¹ (2012) 33 ILJ 2120 (LC)

² 1996 (4) SA 735 (A) at 742B. See also *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC) at 2890B where it was held that:

"I have understood that the test in deciding whether to grant leave to appeal is the traditional test. It requires a judge to ask whether there is a reasonable prospect that another court may come to a different conclusion."

“In such a case the enquiry is whether there are reasonable prospects of success, i.e. whether there is a reasonable prospect that the Court of appeal may take a different view and hold the trial Judge to have been wrong (see S v Ackerman en 'n ander 1973 (1) SA 765 (A); Botes and Another v Nedbank Ltd 1983 (3) SA 27 (A), at 28 D)”

- [4] The facts and background leading to the suspension of Ashondolf are set out in the main judgment and will not be repeated herein, save to state that the basis of the urgent application was the alleged failure by the Second Respondent to apply his mind and to consider Ashondolf's written representations, and the fact that his suspension could not be deemed to be 'precautionary' suspension as was required by Regulation 13 (2) of the SAPS Regulations.
- [5] It has been stated that where a police officer is suspended without pay pending a disciplinary enquiry, he or she has no right not to be suspended, provided that the suspension complies with the requirements of the regulations³. It is accepted that a precautionary suspension has serious implications, as it invariably impacts on the employee's right to dignity and freedom to work⁴. In order for such suspensions to be considered fair or lawful, the rules of natural justice and fairness must be adhered to. These include (a) that there must be justifiable reasons why the employee should be placed on such suspension (this requires at least a *prima facie* basis that the employee had engaged some serious form of misconduct) and (b) the employee must be given an opportunity to make representations why he/she should not be suspended⁵
- [6] In this case, it was common cause that Ashondolf was afforded an opportunity and had indeed made written submissions. Central to his application was that the Second Respondent had failed to apply his mind to those submissions. This issue was dealt with in the main judgment and I am not persuaded that the grounds advanced in this regard in seeking leave to appeal give rise to

³ *Ntuli v SA Police Service & others* (2013) 34 ILJ 1239 (LC) at para [16]

⁴ See *Minister of Home Affairs and Others v Watchenuka* [2004] (4) SA 326 (SCA), and also *Muller and Others v Chairman of the Ministers' Council House of Representative and Others* (1991) 12 ILJ 761 at 775 to 776.

⁵ *Mogotlhe v Premier of the North-West Province and Another* [2009] 4 BLLR 331 (LC)

reasonable prospects of success on appeal. I had further in the judgment dealt with the issue of whether the Second Respondent had complied with the requirements of the regulations, and pointed out that the fact that Ashondolf's written submissions did not yield the outcome he desired did not make the Second Respondent's decision to confirm his suspension without pay unlawful or reviewable. The factors leading to his suspension in my view justified the suspension in question.

- [7] Further having had regard to other grounds relied upon, I am of the view that none of them are sufficiently cogent to persuade me to allow leave to appeal. The Applicants' insistence that the Court ought to have followed the dictum in *Sephanda* as it was binding is clearly misplaced in the light of the distinction drawn between the facts and circumstances of that case and the facts in *casu*.
- [8] Having reflected on my judgment, the grounds upon which leave to appeal is sought and submissions made in that regard, I am of the view that a case has not been made out to demonstrate reasonable prospects of success on appeal. Accordingly, the following order is made;

Order:

- i. The application for leave to appeal against the judgment handed down on 19 June 2015 is dismissed.



Tlhotlhemaje, AJ

Acting Judge of the Labour Court of South Africa

LABOUR COURT