



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Case no: J1915/09

In the matter between:

CHARLOTTE CONNIE MHLONGO

Applicant

and

SOUTH AFRICAN REVENUE SERVICE

Respondent

Heard: 21 January 2016 (In Chambers)

RULING: APPLICATION FOR LEAVE TO APPEAL

MALAN AJ:

Introduction

- [1] In this matter the applicant seeks leave to appeal against the whole of my written judgment and order handed down on 11 September 2015. In the judgment, I dismissed the applicant's application in terms of s 77(3) read with s 77A(e) of the Basic Conditions of Employment Act, 75 of 1997 ('BCEA'). In the application, the applicant sought an order declaring the decision by the respondent to suspend and subsequently dismiss her on 19 May 2009 to be unlawful. The reasons appear from my judgment.
- [2] The application for leave to appeal is opposed by the respondent. Both parties have delivered written submissions as provided for in terms of Rule 30 (3A) as read with paragraph 15 of the Practice Directive.

- [3] I did not deem it necessary for this application for leave to appeal to be heard in open court and considered the application in chambers on the basis of the aforementioned submissions.

Condonation

- [4] The applicant's application for leave to appeal was delivered four (4) days outside of the prescribed time period. The applicant seeks condonation for the aforesaid delay and elected to address the reasons for this delay in her application for leave to appeal and subsequent written submissions. Save as aforesaid, no substantive application was made on notice supported by an affidavit. The respondent has taken issue with the aforesaid and submitted that consequently, the application for leave to appeal was not properly before this court.
- [5] This is a court of equity and fairness and the court has a judicial discretion whether or not to grant such an indulgence when it comes to non-compliance with its Rules. Having regard to the long history of the matter, I regard the delay as immaterial and can see no reason why condonation should not be granted.
- [6] In the premises, the applicant's application for condonation is granted.

Grounds for leave to appeal

- [7] It is trite that the test in deciding whether or not 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 than that of the court *a quo*.¹
- [8] In so far as the applicant seeks leave to appeal against my judgment and order relating to her application for referral of the matter to oral evidence, I

¹ Mofokeng & Others v JAC Pallets Africa CC & Others (2010) 31 ILJ 686 (LC) at p693, para 15; See also Ngcobo v Tente Casters (Pty) Ltd (2002) 23 ILJ 1442 (LC) at 1443A-B; Tsotetsi v Stallion Security (Pty) Ltd (2009) 30 ILJ 2802 (LC) at p 2804, para 14; Ngcobo v Tente Casters (Pty) Ltd (2002) 23 ILJ 1442 (LC); Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel & Others (1999) 20 ILJ 2889 (LC) at 2890B.

am not convinced that there is a reasonable prospect that another court may come to a different conclusion in this regard. In the premises, leave to appeal against my judgment and order on this ground is dismissed.

[9] Although the applicant seeks leave to appeal against the whole of my written judgment and order it is not clear from the applicant's application for leave to appeal or her submissions whether or not she also specifically seeks leave to appeal against my judgment and order dismissing her application for a postponement. However, paragraph 7.1 of her application for leave to appeal briefly makes some reference to this unsuccessful application. In the circumstances, I regard this also as a ground upon which the applicant seeks leave to appeal. I am also not persuaded that there exists a reasonable prospect that another court may come to a different conclusion in this regard. In the premises, leave to appeal against my judgment and order in this regard is also dismissed.

[10] Lastly, in so far as the applicant seeks leave to appeal against the balance of my judgment and order, more particularly relating to findings that the court lacked jurisdiction to determine the matter, I am of the view that there is a reasonable prospect that another court may come to a different conclusion in this regard.

Order

[11] In the premises, I make the following order:

- 11.1. The application for leave to appeal against my judgment and orders relating to the applicant's application for referral of the matter to oral evidence and application for a postponement is dismissed.
- 11.2. The application for leave to appeal against the balance of my judgment and order is granted.
- 11.3. Costs of the application for leave to appeal is cost in the appeal.

L M Malan, AJ
Acting Judge of the Labour Court of South Africa