



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no.: JR 1912/2012

In the matter between:

ABRAHAM LEHOLA

Applicant

And

CCMA

First Respondent

KG NKADIMENG N.O

Second Respondent

**SOUTH AFRICAN CUSTODIAL
MANAGEMENT**

Third Respondent

JUDGMENT

VAN NIEKERK J

- [1] This is an application for leave to appeal against a judgment delivered by this court on 4 December 2015, when the applicant's application to review and set aside an arbitration award issued by the second respondent on 3 July 2012 was dismissed, with costs.
- [2] The material facts are apparent from the judgment, and I do not intend to repeat them here. In essence, the application was dismissed on account of the inordinate delay in its prosecution, and in particular, the filing of the Rule 7A(8) notice some 10 months late. It is not entirely clear on what basis leave to appeal is sought; the grounds for appeal are simply a rehash of the grounds on which the review was sought.
- [3] The test to be applied in an application such as the present is that referred to in s 17 of the Superior Courts Act, 10 of 2013. Section 17(1) provides:
- Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
- (a) (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgements on the matter under consideration;
 - (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and
 - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.
- [4] The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable

prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. This is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin & East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning & another* (C 536/15, 6 November 2015).

[5] There is nothing in the application for leave to appeal that persuades me that the applicant has any prospect of success. The authorities referred to in the judgment (and in particular, the judgment by the Labour Appeal Court in *Collett*), emphasis the degree to which an applicant in a review application must prosecute the application with due diligence.

[6] In so far as the order for costs is concerned, that is a matter for the discretion of the court, a matter in which an appeal court will not ordinarily interfere. The applicant had been warned on many occasions of his failure to comply with the Rules and the potential consequences. In my view, the costs order was appropriate. Had the third respondent sought an order for costs *de bonis propriis*, I would have given serious consideration to such a request.

I make the following order:

1. The application is dismissed, with costs.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT
Chambers

25 January 2016

Labour Court