



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2044/12

THE DEPARTMENT OF NATIONAL TREASURY

Applicant

and

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL

First Respondent

PZG PEKALSKI N.O.

Second Respondent

K MOODLEY

Third Respondent

MS BALOYI N.O.

Fourth Respondent

Decided in Chambers:

Delivered: 27 January 2016

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

- [1] Judgment was handed down on 16 September 2015 in terms of which the arbitration award issued by the Second Respondent dated 2 July 2012 under case number GPBC992/2012 was reviewed and set aside. The matter was remitted back to the First Respondent to be heard *de novo* by an Arbitrator other than the Second Respondent, and no order was made as to cost.

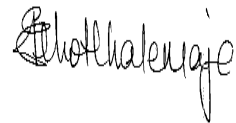
- [2] For the sake of convenience, the parties will remain cited as they were in the review application. The Third Respondent has since filed an application for leave to appeal against the whole of that judgment. The application remained unopposed until 20 January 2016 when the Applicant filed its Notice of intention to oppose and heads of argument. These came to my attention in the afternoon of 26 January 2016 at a stage where this judgment was to be completed. The notice of application for leave to appeal was lodged and filed on 8 October 2015. Written submissions in this regard were filed on 22 October 2015. Despite filing its opposition belatedly, no effort was made on the part of the Applicant to seek an indulgence from the Court in this regard. To this end, the application will be treated as unopposed.
- [3] The grounds upon which leave to appeal is sought are summarised as below. It is essentially contended that;
- a) The court erred in its finding that the arbitrator's (Second Respondent) decision was unreasonable.
 - b) The court erred in finding that an employer may change a sanction of a disciplinary chairperson when it is not merely a recommendation.
 - c) The court erred in proceeding with the matter in terms of section 145 of the Labour Relations Act (LRA), after the Applicant disavowed any reliance on section 158 (1) (h) of the LRA.
 - d) The court erred in that it failed to take the Applicant's complete disregard for the Rules of the court and erred in condoning certain defects associated with the review application.
- [4] It is trite that the test applicable in such applications is whether there is a reasonable prospect that another Court (the Labour Appeal Court) may come to a different conclusion to that reached by the Court whose judgment is sought to be taken on appeal. Furthermore, the possibility that the Labour Appeal Court may come to a different conclusion is to be assessed with reference to the facts and the law, and will further involve a consideration of factors such as whether they have satisfied the Court that there is a

reasonable prospect of the appeal succeeding. A further consideration is whether the matter is of substantial importance for the parties¹.

- [5] I have had regard to the submissions made in regards to this application and the grounds upon which leave to appeal is sought. I am also of the view that that I have dealt in depth with all the issues raised by the Third Respondent in her application for leave to appeal against my judgment. Having reflected on my judgment, and further having had regard to the most recent Labour Appeal Court decision on the issues that were the subject of the review application², I am satisfied that there is a sound, rational basis for a conclusion to be reached that there are reasonable prospects of success on appeal. To this end, the following order is made;

Order:

1. The application for leave to appeal is granted.



Tlhotlhemaje, J

Judge of the Labour Court of South Africa

¹ See *S v Smith* 2012 (1) SACR 567 (SCA) at para [7]; *Dince v Department of Education, North West* [2010] 6 BLLR 631 (LC) para [3] and *GA Motor Winders (Eastern Cape) cc v CCMA* (1999) 20 ILJ 1802 (LC) para [3].

² *South African Revenue Service v CCMA and Others* (JA06/11) [2015] ZALAC 52 (8 December 2015)