



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 2343/12

In the matter between:

SOUTH AFRICAN MEDICAL ASSOCIATION

OBO DR GRZEGORC LUDWICK PIETZ

Applicant

and

DEPARTMENT OF HEALTH – GAUTENG PROVINCE

First Respondent

ADVOCATE RONNIE BRACKS N.O.

Second Respondent

PUBLIC HEALTH AND SOCIAL DEVELOPMENT

BARGAINING COUNCIL

Third Respondent

Heard: Considered in Chambers

Delivered: 29 January 2016

JUDGMENT

RHOODIE AJ

Introduction

- [1] This is an application for leave to appeal against the judgment of this Court made on 29 July 2015, in terms of which, the applicant's review application was dismissed with costs.
- [2] The applicant has now sought leave to appeal against my judgment as referred to above. The applicant filed an application for leave to appeal on 14 August 2015 and filed heads of arguments on 28 August 2015. The first respondent filed its papers on 8 October 2015.

Test for leave to appeal

- [3] In deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another Court might come to a different conclusion to that of the Court *a quo*.¹
- [4] As was specifically said in *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others*:²

'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. See *North East Cape Forests v SAAPAWU and Others* (1997) 18 ILJ 729 (LC); [1997] 6 BLLR 705 (LC) at 710A-B; *NEWU v LMK Manufacturing (Pty) Ltd and Others* [1997] 7 BLLR 901 (LC) and Landman and Van Niekerk *Practice in the Labour Courts* (Service 1) at A-41.'

- [5] The applicant thus have to show in this instance that there is a reasonable prospect of another Court coming to a different conclusion. The applicant has

¹ See *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 ILJ 95 (CC) at paras 25-26; *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC); *Volkswagen SA (Pty) Ltd v Brand No and Others* (2001) 22 ILJ 993 (LC); *Singh and Others v Mondi Paper* (2000) 21 ILJ 966 (LC); *Glaxo Welcome SA (Pty) Ltd v Mashaba and Others* (2000) 21 ILJ 1114 (LC).

² (1999) 20 ILJ 2889 (LC) at para 4.

raised 26 individual grounds on which leave of appeal application is based. Considering the conclusion that I have come to, I will not address all of these individual grounds.

The merits of the application for leave to appeal

[6] The facts and background leading to the dismissal of Dr. Pietz are set out and dealt with in the Second Respondent's award and then in the main judgment and will thus not be repeated herein.

[7] From the outset, I am compelled to state two grounds of appeal raised by the applicant are as follows:

7.1 The decision to award no compensation demonstrate reasonable prospects of success on appeal.

I would be disposed in favour of the granting of leave to appeal on the very issue of the applicant's interpretation of section 38 of the Constitution in *Hoffmann v South African Airways*.³ What may constitute "appropriate relief" for the purposes of this matter? I have addressed this issue in detail in my judgment but I am of the view that the certainty which can be provided by the Labour Appeal Court considering and determining this fundamental issue would be of significant value.

7.2 The incidents unrelated to patient Hlatshwayo also demonstrate reasonable prospects of success on appeal.

The interpretation of the case of *Palluchi Home Depot (Pty) Ltd v Herskowitz and Others*⁴ will determine whether this ground/argument will convince another Court to come to a finding different from the decision reached by myself. What this, however, surely must demonstrate, for the purposes of an application for leave to appeal, is that this is a matter where Judges may reasonably differ. Due to the

³ 2001 (1) SA 1 (CC); 2000 (11) BCLR 1235 (CC); [2000] 12 BLLR 1365 (CC).

⁴ [2015] 5 BLLR 484 (LAC).

importance of this aspect in the conclusions reached by this Court, it would justify the attention of the Labour Appeal Court.

- [8] In considering whether to grant leave to appeal, I am enjoined to determine whether there are reasonable prospects that another Court, having regard to the same material that served before this Court, is likely to arrive at a different conclusion. Having had regard to the various grounds relied upon, I am of the view that some of them are sufficiently cogent to persuade me to allow leave to appeal.
- [9] 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 in fact been made out to demonstrate reasonable prospects of success on appeal.
- [10] Accordingly, the following order is made:
1. The applicant's application for leave to appeal is granted.
 2. The applicant's is given leave to appeal to the Labour Appeal Court against the whole of my judgment handed down on 29 July 2015.
 3. Costs are to be costs in the appeal.

Rhodie, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Advocate, F A Boda

Instructed by: Hogan Lovells Incorporated as Routledge Modise Inc

For the Respondent: Advocate S B Nhlapo

Instructed by: State Attorney

LABOUR COURT