



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 1802/12

In the matter between:

NUMSA obo J MDLULI AND 8 OTHERS

Applicant

and

CUSTOM HARNESS MANUFACTURER CC

Respondent

Date: 15 February 2016

Decided in chambers.

RULING: APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

[1] In terms of a judgment and order handed down on 29 May 2015, the applicants' claim that their dismissal constituted an automatically unfair dismissal within the meaning of section 187 (1) (g) of the Labour Relations Act¹ (the LRA) was dismissed by this court. The applicants now seek leave to appeal against the whole of that judgment and order. The application is unopposed.

¹ Act 66 of 1995 as amended

- [2] The test applicable to applications for leave to appeal is well established. The enquiry is whether or not there is a reasonable prospect that another Court might come to a different conclusion to that of the Court *a quo*².
- [3] The applicants' claim of an automatically unfair dismissal arose out of the allegation that the business of their previous employer (Allprod (Pty) Ltd), was transferred as a going concern to the respondent as contemplated in section 197 or 197A of the LRA.
- [4] After the applicants had commenced with and closed their case during trial, the respondent had sought absolution from the instance, contending that the applicants had not *prima facie*, demonstrated that there was a transfer of the same business as a going concern as contemplated in section 197 or 197A of the LRA.
- [5] In this application, the applicants contend *inter alia* that the court erred in finding that they (applicants) had failed to establish that on the evidence adduced, no reasonable court could or might reach the conclusion that the applicants had established a *prima facie* case that the business of All Prod (Pty) Ltd was transferred as a going concern to the respondent. It is further their contention that the court erred in finding that the cause of their dismissal was not the transfer of the business and was therefore not automatically unfair.
- [6] The test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court³. In this case, I have had regard to the grounds upon which leave to appeal is sought and the submissions made in that regard. I am of the firm view that the issues raised in the application have been dealt with in depth in the judgment. With particular reference to paragraphs [22] to [28] of the judgment, I am satisfied that the difficulties with the applicants' case were identified, necessitating the granting

² See *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. 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.'

³ See *S v Smith* 2012 (1) SACR 567 (SCA) at para [7]

of absolution from the instance, and no purpose would be served by burdening this judgment with the same issues.

- [7] Having reflected on my judgment, and further having had regard to the facts of the case, the evidence led on behalf of the applicants and the applicable legal principles, I am not convinced that the case is arguable on appeal, or that there is a sound or rational basis for a conclusion to be reached that there are prospects of success on appeal.

Order:

- i. The application for leave to appeal is dismissed.



Tlhotlhemaje, J

Judge of the Labour Court of South Africa