



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 2595/15

In the matter between:

SAMUEL CHIEF SEATHLOLO

FIRST APPLICANT

THULASIZWE SIBANDE

SECOND APPLICANT

SCOTCH MPONENG DIBETSO

THIRD APPLICANT

JOHANNES DUBE

FOURTH APPLICANT

LAWRECE NZELE

FIFTH APPLICANT

SEBENZILE XABA

SIXTH APPLICANT

and

CHEMICAL, ENERGY, PAPER, PRINTING, WOOD

AND ALLIED WORKERS UNION

FIRST RESPONDENT

SIMON MOFOKENG

SECOND RESPONDENT

THAMSANQA MHLONGO

THIRD RESPONDENT

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

- [1] The applicant seeks leave to appeal against the whole of the judgment delivered by this court on 4 January 2016 when an application to interdict a meeting of the first respondent's national executive committee and for other ancillary relief was dismissed, with costs.
- [2] 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.
- [3] 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. As the respondents observe, the use of the word “would” in s17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a

different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, 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).

- [4] The material facts that gave rise to the application are recorded in the judgment, and I do not propose to repeat them here. In so far as the present application is concerned, there is some incongruence between the application for leave to appeal and the written submissions made on the applicants' behalf, but I understand the present application to be premised on five grounds. The first is that the court erred in not finding that the respondents had perpetrated ongoing breaches of various provisions of the first respondent's constitution; secondly, that the court erred in finding that the applicants had an adequate alternative remedy at their disposal; thirdly, that the court erred in finding that the applicants were not entitled to seek the court's intervention prior to the meeting in question and in anticipation of an alleged irregularity; fourthly, that the court misdirected itself by failing to consider and address the relief sought by the applicants in prayer 3.1 of the notice of motion; and fifthly, that the court failed to consider and address the relief sought in prayer 4 of the notice of motion.
- [5] In relation to the first ground, quite simply, the purpose of the application that served before the court was not to determine the extent of any compliance with this court order dated 9 October 2015, or the extent to which the respondents had allegedly breached the provisions of the first respondent's constitution. What

the applicants sought to do was to interdict a meeting to be held the next day. It was not for the court to make any finding as to any ongoing breaches of the relevant provisions of the unions' constitution, especially since these were the subject of the order previously granted and the 90-day period within which compliance was to be effected. Insofar as the availability of an alternative remedy is concerned, the remedy proposed by the respondents and accepted by the court was that the applicants could attend the meeting scheduled for 5 January 2016 and raise their concerns at the meeting. In other words, it was not for the court to anticipate any alleged irregularity relating to the meeting and to interdict it on that basis. There was no evidence that served before the court to indicate that the meeting ought to be interdicted had been improperly convened in terms of the first respondent's constitution. Even if the court was incorrect in coming to that conclusion, any appeal against that finding would be moot, since the date of 5 February 2016 has passed. Should the applicants seek to set aside resolutions adopted at that meeting, that of course remains a remedy available to them.

- [6] To the extent that the applicant contends that the court erred by failing to consider or grant the relief sought in prayers 3 and 4 of the notice motion, it should be recalled that much of the information sought is the subject of the order granted on 9 October 2015, when the court fixed a period of 90 days within which the requested information was required to be furnished. It is not disputed that when the application that is the subject of the present proceedings was filed, the time period had not yet expired.
- [7] In so far as the relief claimed in prayer 4 of the notice of motion is concerned, the relief relating to particular documents and the fulfilment of constitutional obligations was clearly intended to relate to some future meeting of the NEC, on the assumption that the meeting scheduled for 5 January 2016 would be interdicted. To the extent that this paragraph contemplates prayers relevant to preconditions to the reconvening of an interdicted meeting, the dismissal of the application effectively disposed of the relief sought in this regard.

[8] In short: there is nothing in the present application that persuades me that any appeal would have a reasonable prospect of success. The present application is purely academic, given that its primary purpose was to interdict a meeting to be held the next day. Finally, there is no reason why the applicants ought not to pay the costs of this application on a basis that excludes the use of more than one counsel.

I make the following order:

1. The application for leave to appeal is dismissed, with costs, such costs to be paid by the applicants, jointly and severally, the one paying the other to be absolved.

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR COURT

Chambers

24 February 2016