



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 119/10

In the matter between:

STATISTICS SOUTH AFRICA

APPLICANT

and

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL

FIRST RESPONDENT

PM NGAKO N.O

SECOND RESPONDENT

TN NKUNA

THIRD RESPONDENT

NEHAWU

FOURTH RESPONDENT

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

[1] This is an application for leave to appeal against the whole of the judgment delivered by Halgryn AJ on 28 August 2014, the application having been heard on 5 June 2012.

[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.

[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. The use of the word “would” in s17(1)(a)(i) is 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).

- [5] The grounds for leave to appeal deal first with the court's finding that there had been no attack made by the applicant in these proceedings on the second respondent's finding that the third respondent's dismissal was procedurally unfair. The applicant contends that this conclusion is not supported by the record and that another court may conclude that the dismissal of the third respondent was not procedurally unfair. Given the conclusion to which the court came (i.e. that the dismissal was substantively unfair and that the third respondent should be reinstated) and the conclusion to which I have come in the present application, this ground for leave to appeal has been rendered academic.
- [6] The balance of the grounds on which leave to appeal is sought rely on a trawling through the evidence disclosed by the record and the assertion in each case that findings made by the court were not sustainable. In my view, all of these submissions ignore the LAC's caution expressed in *Gold Fields Mining SA (Pty) Ltd v CCMA* [2014] 1 BLLR 20 (LAC) that an applicant in review proceedings should not deal with an award in a piecemeal fashion to determine whether one or another failure by an arbitrator to deal with specific evidence, or the manner in which the arbitrator dealt with particular evidence, constitutes a reviewable irregularity. Rather, a review court must consider the totality of the evidence before the Commissioner and decide whether the decision made is one to which a reasonable decision maker could come.
- [7] In its judgment, the court dealt with each of the conclusions reached by the commissioner in respect of each of the charges of misconduct brought against the third respondent. In my view, there is no prospect that another court would come to a different conclusion or, put another way, conclude that on the evidence

before the commissioner, his decision did not meet the reasonableness threshold. Finally, there's no reason why cost should not follow the result.

For the above reasons, I make the following order:

1. The application for leave to appeal is dismissed, with costs.

ANDRE VAN NIEKERK
JUDGE OF THE LABOUR COURT

Chambers

26 February 2016