



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: J 1206/15
J1529/15

In the matter between:

BONGA BALDWIN MAJOLA

Applicant

and

**MEMBER OF THE EXECUTIVE COUNCIL
FOR ROADS AND TRANSPORT:
GAUTENG PROVINCIAL GOVERNMENT**

First Respondent

**HEAD OF DEPARTMENT FOR ROADS AND
TRANSPORT: GAUTENG PROVINCIAL
GOVERNMENT, MR RONALD SWARTZ**

Second Respondent

GRAHAM MOSHOANA N.O.

Third Respondent

Heard: 15 December 2015

Delivered: 17 February 2017

Summary: Leave to appeal – no reasonable prospect that the Labour Appeal Court is likely to arrive at a different conclusion – leave to appeal dismissed.

ABOUR COURT

LEAVE TO APPEAL JUDGMENT

MOSAM, AJ

Introduction

- [1] This is an application for leave to appeal against the judgment of this Honourable Court, delivered on 12 July 2016.

The Test

- [2] The general test for leave to appeal was clearly laid down by the Supreme Court of Appeal (then the Appellate Division) in *Zweni v Minister of Law and Order*,¹ where Harms AJA (as he then was) said:

“The jurisdictional requirements for a civil appeal emanating from a Provincial or Local Division sitting as a Court of first instance are twofold:

- 1) the decision appealed against must be a ‘judgment or order’ within the meaning of those words in the context of s 20(1) of the [Supreme Court] Act; and
- 2) the necessary leave to appeal must have been granted, either by the Court of first instance, or, where leave was refused by it, by this Court. Leave is granted if there are reasonable prospects of success.”

- [3] However, in *Martin & East (Pty) Ltd v National Union of Mineworkers & Others*², the Court held that there is a stricter test that is applicable for appeals to the Labour Appeal Court. The Court held, in particular, that the Labour Relations Act³ was designed to ensure the expeditious resolution of

¹ 1993 (1) SA 523 A at 531B–E.

² (2014) 35 ILJ 2399 (LAC).

³ 66 of 1995.

industrial disputes and this means that the Labour Court needs to be cautious when leave to appeal is granted.⁴

[4] There are two sets of interest to be considered: first, the interest of the applicant which is entitled to have his rights vindicated if there is a reasonable prospect that another court might come to a different conclusion and the interests of the respondent which may have to wait years for an appeal to be prosecuted. Second, where the matter is resolved on own facts, no novel point of law, no misinterpretation of existing law, the matter must end at Labour Court.⁵

[5] Accordingly, the applicant will have to satisfy the strictest test for leave to appeal.

Discussion

[6] In essence, the applicant contends that this Honourable Court erred in not finding “*exceptional*” or “*special*” circumstances in allowing the applicant leave to file a supplementary affidavit. It is further contended that this Honourable Court erred in not finding that the applicant was entitled to protection under the PDA.

[7] It is in this respect that it is submitted that there are good prospects that the Labour Appeal Court may reach a different conclusion than the one reached by this Honourable Court if leave to appeal was granted.⁶

[8] In the present matter, I have not been persuaded that there is a reasonable prospect that the Labour Appeal Court is likely to arrive at a different conclusion if leave to appeal was to be granted in this matter.

⁴ *Martin & East (Pty) Ltd* above n 2 at 2405-6.

⁵ See *id* at 2406.

⁶ The applicant’s application for leave to appeal dated 26 July 2016; The First and Second Respondents did not oppose the appeal.

Order

- [9] In the premises, the application for leave to appeal to the Labour Appeal Court is refused.

MOSAM, AJ

ABOUR COURT