



THE LABOUR COURT OF SOUTH AFRICA

JOHANNESBURG

Not Reportable
Case no: JS 564/11

In the matter between:

EDGAR THIBIRI MOKHELE and 7 OTHERS

Applicant

and

PAVING WAREHOUSE CC

Respondent

Decided: In chambers

Judgment: 22 March 2017

RULING ON LEAVE TO APPEAL

EVERETT AJ;

Introduction

[1] The applicant, Paving Warehouse cc, seeks leave to appeal my judgment handed down on 19 May 2016.

- [2] The applicant seeks leave to appeal my finding that the dismissals were unlawful and invalid and my finding in the alternative that the dismissals were automatically unfair. The applicant challenges my interpretation of the words “immediately before” in section 197A(2)(a) of the Labour Relations Act¹ (LRA) as well as the correctness of my interpretation of the consequences of sections 197A.
- [3] In its submissions the applicant contended that the business was transferred but claimed that it was entitled to arrange its affairs in accordance with the provisions of section 197A and to take advantage thereof, whereas I adopted a purposive approach, which I found to be to protect the employment security of workers affected by transfers.

The test for granting leave to appeal

- [4] The test to be applied in an application for leave to appeal is that referred to in section 17 of the Superior Courts Act. Section 17(1) provides that leave to appeal “may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success” or there is some other compelling reason why the appeal should be heard.
- [5] In this case, the applicant submits that there is a conflicting judgment on the meaning of “immediately before” and the interpretation of the consequences of a transfer in terms of section 197A generally.
- [6] The Labour Appeal Court has recently noted that this Court ought to be cautious in granting leave to appeal. This is in line with a key purpose of the LR A which is to promote expeditious resolution of labour disputes. Accordingly, appeals should 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.
- [7] Applying the test of whether another judge may have come to a different conclusion, I am of the view that this decision hinges on the interpretation of section 197A and that it is important for the labour market generally that the

¹ Act 66 of 1995.

Labour Appeal Court clarify the correct interpretation. It is therefore appropriate to grant leave to appeal.

Order

[8] In the premises, I make the following order:

1. Leave to appeal the judgment dated 19 May 2016 is granted.
2. Costs to be costs in the appeal.

Winnie Everett

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv. RG Beaton SC

Instructed by:

De Villiers & Du Plessis Attorneys

For the Respondent

Ms Lameeze Jean-Pierre of Fasken Martineau

Labour Court