



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR76/13

In the matter between:

THE MINISTER OF POLICE

First Applicant

NATIONAL COMMISSIONER OF POLICE

Second Applicant

and

MM KGOPA

First Respondent

LT COLONEL DE LANGE

Second Respondent

Decided: 23 March 2017 (in chambers)

RULING ON LEAVE TO APPEAL

EVERETT AJ

Background

- [1] The applicants seek leave to appeal my judgment of 19 May 2016. The application is unopposed.
- [2] In essence, I had decided that the decision of the chairperson at a disciplinary hearing to grant absolution from the instance – while manifestly wrong in law - could not be taken on review by the state in terms of either section 158(1)(g) or (h) of the Labour Relations Act¹.
- [3] The applicant submitted that I erred in finding that the employer had no *locus standi* to review its own decision and it relied on the following decisions in support of the application: *Hendricks v Overstrand Municipality and Another*²; *Ntshangase v MEC for Finance, Kwa-Zulu Natal and Another*³; *Khumalo and Another v Member of the Executive Council for Education: Kwa-Zulu Natal*⁴.

Test for 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. A compelling reason is obviously where there are decided cases to the contrary.
- [5] I would distinguish the decisions referred to by the applicant in the application for leave to appeal. However, there is sufficient similarity in the facts of the decided cases, in particular that of *Hendricks*, for me to conclude that another judge may have come to a different conclusion on the basis for review of a State functionary and may have set aside the chairperson’s decision.
- [6] Applying the test of whether another judge may have come to a different conclusion, I am of the view that this application should succeed.

¹ Act 66 of 1995.

² 2015 36 *ILJ* 163 (LAC)

³ (2010) 3 SA 201 (SCA)

⁴ (2014) 35 *ILJ* 613 (CC).

Order

[7] I therefore rule as follows:

1. Application for leave to appeal is granted.
2. There is no order as to costs.

Winnie Everett

Acting Judge of the Labour Court of South Africa