



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR1907/14

In the matter between:

GLENCORE OPERATIONS SOUTH AFRICA (PTY) LTD

(LION FERROCHROME)

Applicant

and

NUM obo SOUL MTSHWENE

First Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Second Respondent

SIMON MOHUBEDU RANTHO N.O.

Third Respondent

Decided: In Chambers

Delivered: 19 April 2017

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

KIRSTEIN, AJ

- [1] Judgment in the application for the review of the arbitration award made by the third respondent was handed down on 1 December 2016.
- [2] On 22 December 2016 the first respondent delivered an application for leave to appeal.

- [3] On 26 January 2017 the first respondent delivered submissions on the application for leave to appeal.
- [4] On 1 February 2017 the applicant delivered answering submissions on the application for leave to appeal. In the answering submissions the applicant referred to the late delivery of the application for leave to appeal and submissions. It is submitted that the application for leave to appeal was delivered on 23 December 2016 and therefore one day out of time. The submissions on leave to appeal by the third respondent were delivered on 26 January 2017 and therefore approximately 2 weeks out of time.
- [5] Subsequently the first respondent delivered an application for condonation. The application for condonation is unopposed. Having considered the application for condonation, the late filing, if any, of the application for leave to appeal and the late filing of the submissions on leave to appeal is condoned.
- [6] Both parties filed comprehensive written submissions. The third respondent appeals against the finding to dismiss the condonation application of the cross appeal and appeal against the finding that the dismissal of the third respondent was substantively fair.
- [7] It is trite that in order to be entitled to leave to appeal, an applicant in the application for leave to appeal must satisfy the court that it has reasonable prospects of success on appeal and based on the facts and the law, another court could arrive at a conclusion different than the one reached by the court *a quo*. In *Smith v S*¹ the court held as follows:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal”.

¹ 2012 (1) SACR 567 (SCA) at para 7.

- [8] In *Westing House Break and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd*² the court stated that an appeal should be allowed where the matter is of great importance or where the matter is of public importance or where the court is of the view that the decision might affect other questions.
- [9] After due consideration of the application for leave to appeal and the opposing submissions thereto, I am persuaded that there is a reasonable prospect that another court could arrive at a different conclusion than the one arrived at by this court. Furthermore I am also of the view that there is an important question of law which should be decided and that requires the appeal to be heard.
- [10] In the event the following order is made.

Order

1. Condonation for the late filing of the leave to appeal and the submissions on leave to appeal is granted.
2. Leave to appeal is granted.
3. Costs to be costs in the appeal.

Kirstein AJ

Acting Judge of the Labour Court of South Africa

² 1986 (2) SA 555 (A)