



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: JR603/15

In the matter between:

**LETHOKGO ABRAM MALAPANE**

**Applicant**

and

**GLENCORE OPERATIONS SOUTH AFRICA (PTY) LTD**

**Respondent**

**Heard: In Chambers**

**Delivered: 03 May 2017**

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**JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL**

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**MALINDI AJ**

[1]. The Applicant, who is the First Respondent in the review application,

Lethokgo Abram Malapane (Malapane), applies for leave to appeal against the whole of the judgment and order of this Court which was handed down on 5 January 2017.

[2]. The Applicant for review, Glencore Operations South Africa (Pty) Ltd (Goedgevonden Colliery) (the employer) opposes the application.

[3]. The main grounds of appeal are that:

3.1. the Court erred in remitting the matter back to the CCMA for arbitration *de novo* before a different Commissioner without giving reasons why it could not substitute its own decision;

3.2. the Court reversed an adverse credibility finding made by the Commissioner against the employer's only witness whereas credibility findings may not be disturbed as they are to be decided by the trier of the facts; and

3.3. that the Court found Malapane guilty of a charge that was not proffered against him.

[4]. I have considered the written submissions by both parties and am of the view that there exists a reasonable prospect of success on appeal and

therefore that leave to appeal should be granted.

[5]. In the circumstances I make the following order:

1. Leave to appeal against the whole judgment and order of the judgment which was handed down on 5 January 2017 under case number JR 603/2015 is granted.
2. Costs shall be costs in the appeal.

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Malindi, AJ  
Acting Judge of the Labour Court

Submissions:

For Applicants: Mr SG Seepamore of Moshoana Mabena Mogane Inc  
Tel: (011) 262-0406/9  
Fax: (011) 262-0404

For Respondent: Mr Doctor Cithi of Mervyn Taback Inc  
Tel: (011) 358-7700  
Fax: 0867712628