



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 1906/14

In the matter between:

GLENCORE OPERATIONS

SOUTH AFRICA (PTY) LTD (Lion Ferrochrome)

Applicant

and

NUM obo SIMON MARIPANE

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

SIMON MOHUBEDU RANTHO N.O.

Third Respondent

Heard: 28 November 2016

Delivered: 11 May 2017

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

HARPER AJ

Introduction

- [1] On 20 September 2016 I delivered a judgment in which I made the following order:

“47.1. The Review Application is granted and hence the award of the Arbitrator is substituted with an order that the First Respondent is dismissed as from 7 February 2014;

47.1.1 No compensation is granted to the First Respondent;

47.1.2 No order is granted in respect of the costs of the Review;

47.1.3 The Cross-Review is dismissed;

47.1.4 There is no order granted in respect of the costs of the Cross-Review.”

Application for leave to appeal

- [2] The first respondent seeks leave to appeal against the whole judgment in favour of the applicant in relation to the dismissal of the cross-review of the first respondent.
- [3] Paragraph 1 of the application for leave to appeal states that the first respondent refers to the whole judgment but then only refers to the cross-review. I shall assume for the purposes of this judgment that the application for leave to appeal is intended to deal with both the review and the cross-review. In the absence of doing so, the application would be inherently contradictory and in any event the application refers to the whole judgment.
- [4] I have perused the application for leave to appeal and the submissions of the first respondent and the submissions of the applicant in response thereto. As the first respondent, for the purposes of this application, referred to itself as the first respondent and Glencore Operation South Africa (Pty) Ltd (Lion Ferrochrome) as the applicant, in order to avoid any confusion I have used those descriptions in this judgment.

- [5] The application essentially constitutes a repeat of what was dealt with during the review hearing and does not offer further insight in any significant sense in relation to why the application for leave to appeal should be granted by this Court. The judgment in the review proceedings deals with the relevant issues and accordingly I will not canvas the details again.

The test for granting leave to appeal

- [6] The test to be applied is dealt with in section 17 of the Superior Courts Act.¹ Section 17(1) of the Act provides:

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) The decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.” (Emphasis added.)

- [7] The formulation of the test requires the Court to determine whether there is a reasonable prospect that another Court would come to a different conclusion to that reached in the judgment a quo.² The use of the word “would” in section 17(1)(a)(i) of the Act indicates that the test has been lifted to a higher requirement as the word “would” is used rather than the word “could”.³

- [8] Paragraph 2 of the application for leave to appeal states that another Court “*might find*” that another Court in summary would deal with the matter

¹ Act 10 of 2013. (the Act)

Seathlolo & Others v Chemical Energy Paper Printing Wood & Allied Workers Union & others (2016) 37 ILJ 1485 (LC) at para 2.

² *Id* at para 3.

³ Steenkamp J in *Andrew James Shelton v The Statutory Council for the Print Newspaper and Packaging Industries & Others* [2016] ZALCCT 12 at para 4.

differently. As indicated above, the test is not whether another Court “*might find*” but whether it “*would find*” that there are reasonable prospects of success in another Court. Accordingly, the test referred to in the application falls short of the correct standard.

Merits of application for leave to appeal

[9] In summary the following issues are pertinent:

- 9.1 A failure to work for a substantial period on the part of the first respondent arising from a personal complaint should neither be condoned nor supported by this Court in circumstances where the employer complies with its contractual obligation to pay his salary and has instructed him to return to his former position;
- 9.2 The behaviour of the respondent during the last month of his employment with the applicant was inexcusable and constituted daily material breaches of his conditions of employment;
- 9.3 The first respondent could have addressed the issue in a constructive and hence different manner by obtaining advice at the point when he believed that he had a grievance;
- 9.4 As the first respondent was obliged to comply with and observe his conditions of employment, the instruction of the applicant was valid and lawful;
- 9.5 He failed to exercise his perceived rights by formally lodging a dispute or instituting legal proceedings against NUM and possibly the applicant.

[10] For these reasons and the reasons set out in the review judgment, the respondent does not have good prospects of success on appeal.

Conclusion

[11] The applicant's prospects of success in the application for leave to appeal, at worst, are without merit and at best are very poor.

[12] For these reasons, the application must be dismissed and in the circumstances costs should follow the result.

Order

[13] I therefore make the following order:

- 13.1 The application for leave to appeal against the finding of this Court in respect of the outcome of the review and the cross-review is dismissed;
- 13.2 The applicant is ordered to pay the costs of the first respondent.

Roderick Harper

Acting Judge of the Labour Court of South Africa

Appearances

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LABOUR COURT