



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 2395 / 14

In the matter between:

VUYOKAZI NDEBELE

Applicant

and

THE SOUTH AFRICAN POLICE SERVICE

First Respondent

THE NATIONAL COMMISSIONER OF POLICE

Second Respondent

Heard: Considered in Chambers

Delivered: 4 July 2017

Summary: Application for leave to appeal – non compliance with Practice Manual – no proper case for leave to appeal made out – application dismissed

JUDGMENT

SNYMAN, AJ

Introduction

- [1] The current applicant for leave to appeal was the second respondent in a review application brought by the current first and second respondent in this application (SAPS), seeking to review and set aside disciplinary proceedings by the State in its capacity as employer in terms of Section 158(1)(h) of the LRA.
- [2] The review application was argued before me on 15 September 2016 by both the applicant and first and second respondents, and in a written judgment handed down on 6 April 2017, I upheld the respondents' review application, reviewed and set aside the determination of the disciplinary hearing chairperson, substituted the determination with a finding that the applicant was guilty of the charges, and determined that the disciplinary proceedings be reconvened in order to determine an appropriate sanction.
- [3] On 2 May 2017, the applicant then filed an application for leave to appeal. In a written directive to the parties on 30 May 2017, both parties' attention was drawn to the provisions of clause 15.2 of the Practice Manual, and the parties were directed to file written submissions in terms thereof. Despite this directive, none of the parties have filed written submissions.
- [4] Clause 15.2 of the Practice Manual provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason why the application for leave to appeal needs to be dealt with in open Court, and I shall therefore determine the applicant's leave to appeal application in chambers.

Leave to appeal

- [5] In terms of clause 15.2 of the Practice Manual, the applicant in a leave to appeal application is required to file written submissions in support of the application for leave to appeal within 10 (ten) days of filing the application for leave to appeal. No such submissions were ever forthcoming from the applicant, despite also being directed to do so on 30 May 2017 by my associate.

[6] In *Ralo v Transnet Port Terminals and Others*¹ the Court said

‘.... The Practice Manual contains a series of directives, which the Judge President is entitled to issue. In essence, the manual sets out what is expected of practitioners so as to meet the imperatives of respect for the court as an institution, and the expeditious resolution of labour disputes (see clause 1.3). While the manual acknowledges the need for flexibility in its application (see clause 1.2), its provisions are not cast in the form of a guideline, to be adhered to or ignored by parties at their convenience.’

[7] Considering that a Judge is entitled, in terms of the Practice Manual, to decide a leave to appeal application in chambers based on written submissions, the failure to file written submissions in these instances may be viewed to be similar to a party failing to appear in Court to argue the case, and all the consequences associated with it, which may include dismissing the application on this basis alone. But at the very least, this failure by the applicant leaves the leave to appeal application unmotivated.

[8] In my view, the applicant’s failure to file written submissions despite the clear provisions of the Practice Manual and despite being called on to do so, should lead to the dismissal of the application for leave to appeal for this reason alone.

[9] The above being said, I will nonetheless consider the application for leave to appeal, on the merits thereof, as emanating from the application for leave to appeal as it stands.

[10] In deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another Court may come to a different conclusion to that of the Court *a quo*.²

¹ (2015) 36 ILJ 2653 (LC) at para 9. See also *MJRM Transport Services CC v Commission for Conciliation, Mediation and Arbitration and Others* (2017) 38 ILJ 414 (LC) at paras 12 – 13; *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and Others* (2014) 35 ILJ 1672 (LC) at para 11.

² See *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 ILJ 95 (CC) ; *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC); *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC); *Volkswagen SA (Pty) Ltd v Brand NO and Others* (2001) 22 ILJ 993 (LC); *Singh and Others v Mondi Paper* (2000) 21 ILJ 966 (LC); *Glaxo Welcome SA (Pty) Ltd v Mashaba and Others* (2000) 21 ILJ 1114 (LC).

- [11] Recently, and in *Seathlolo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*³ the Court again considered the above test for leave to appeal and held:

‘The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. ... Further, this is not a test to be applied lightly — the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals 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 ...’

- [12] As a general proposition, the applicant’s grounds for seeking leave to appeal are in essence nothing more but the applicant disagreeing with the conclusions I came to on the facts, especially where it came to deciding what was the proper evidence before the disciplinary hearing chairperson. To merely disagree with my conclusions on the facts, and then propose that alternative factual findings should have been made, does not establish a reasonable prospect of another Court coming to a different conclusion as envisaged by the applicable test in considering an application for leave to appeal. The applicant has simply made out no proper case in this regard, and considering that this matter dates back to 2013, the following *dictum* from the judgment in *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*⁴ is apposite:

‘... I indicated that the events in this case took place in 2010. The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the court a quo, need to be cautious when leave to appeal is granted.’

- [13] Further, and in setting out the factual conclusion the applicant contends I should have made, the applicant has in effect just once again repeated

³ (2016) 37 ILJ 1485 (LC) at para 3.

⁴ (2014) 35 ILJ 2399 (LAC) at 2405J-2406A

virtually the same arguments that the applicant advanced when arguing the matter before me on the merits in the first place. I still remain unconvinced that these arguments have substance. I remain equally unconvinced that there exists any reasonable prospect that another Court could come to a different conclusion, on these arguments.

[14] I thus conclude that the applicant, overall, has shown no reasonable prospect that another Court could come to a different conclusion, and the leave to appeal application must fail.

[15] As to costs, the respondents did not engage in the application for leave to appeal, and also did not file written submissions. For these reasons, I will make no costs order in respect of the application for leave to appeal.

Order

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

1. The applicant's application for leave to appeal is dismissed.

S Snyman

Acting Judge of the Labour Court

Appearances:

For the Applicant: M L Mateme Inc Attorneys

For the Respondents: The State Attorney