



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J 990 / 17

In the matter between:

SANDI MAJAVU

Applicant

and

LESEDI LOCAL MUNICIPALITY

First Respondent

ISAAC RAMPEDI N.O

Second Respondent

**THE SPEAKER: LESEDI LOCAL MUNICIPAL
COUNCIL**

Third Respondent

Heard: Considered in Chambers

Delivered: 4 July 2017

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

JUDGMENT

SNYMAN, AJ

Introduction

- [1] On 5 May 2017, I dismissed the applicant's urgent application to interdict disciplinary proceedings to be conducted against him at the first respondent, with costs on the scale as between attorney and own client.
- [2] On 29 May 2017, the applicant filed an application for leave to appeal, only in respect of the costs order.
- [3] 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

- [4] Further 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 29 May 2017 by my associate.
- [5] 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

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.

(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.’

- [6] 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.
- [7] 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.
- [8] The above being said, and in any event, this Court exercises a discretion where it comes to awarding costs. Interference with such a costs award on appeal would not be competent, unless it can be shown that such discretion has been improperly exercised in a manner that is not judicial. In *Janse van Rensburg v City of Tshwane Metropolitan Municipality*² the Court held:

‘Appeals against cost orders should not be prosecuted too readily, but are permitted in certain circumstances. The approach of our courts where an appeal is directed only against the costs order is spelt out in *Cronje v Pelser* 1967 (2) SA 589 (A) at 592H–593A where it was held:

“Hierdie Hof sal nie ingryp in die Hof *a quo* se beslissing oor koste nie tensy dit geskied het sonder ’n judisiële uitoefening van diskresie. Die toets is . . . of die beslissing gebaseer is op gronde waarop ’n redelike mens tot so ’n besluit kon geraak het. . . . ’n Beslissing oor koste is ’n kwessie van diskresie in elke besondere geval.”

The applicant has simply made out no case and have provided no grounds upon which the discretion I exercised in awarding costs would be assailable.

² [2013] 4 All SA 141 (GNP) at para 36.

[9] The applicant therefore has provided no basis for leave to appeal being granted, and the leave to appeal application must be dismissed.

[10] As to costs, the respondents have not opposed the application. I shall therefore make no order as to costs.

Order

[11] 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: Wakaba & Partners Inc Attorneys

For the Respondents: Tshiqi Zebediela Inc Attorneys