



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 649/15

In the matter between:

AUTOZONE HOLDINGS (PTY) LTD T/A

Applicant

AUTOZONE

and

JOHAN MOOLMAN

First Respondent

DISPUTE RESOLUTION CENTRE FOR

Second Respondent

THE MOTOR INDUSTRY BARGAINING COUNSEL

JANINE JOHNSON

Third Respondent

Considered:

In Chambers

Delivered:

7 September 2017

JUDGMENT: LEAVE TO APPEAL

MAKINTA AJ

- [1] This is an application for leave to appeal by the applicant, Autozone Holdings (Pty) Ltd (Autozone), which is an employer of Johnson, against the whole of this Court's judgment and order dated 26 May 2017, in which the Court found that, the arbitration award of the first respondent, Johan Moolman (Arbitrator), is reasonable, and dismissed the applicant's application to review it.
- [2] At the outset, it has to be noted that, the judgment has a typing error in paragraph twenty (20), the second last word, which should be "*latter*" and not "*letter*".
- [3] In determining whether an application for leave to appeal should be granted, the court must take various factors into consideration. Chief of which is whether the applicant has to the satisfaction of the Court demonstrated that there are reasonable prospects of success on appeal.¹ This principle was postulated in *Smith v S*² where it was held:

"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

¹ Section 17 of the Superior Courts Act 10 of 2013:

(1) 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

² 2012 (1) SACR 567 (SCA) at para 7

sound, rational basis for the conclusion that there are prospects of success on appeal. [Footnotes omitted]

- [4] A further factor that this Court must considered, as cautioned by the Labour Appeal Court³, is that judges of this Court must exercise caution when seized with an application for leave to appeal, and must ensure that matters that are elevated to the appeal court must be limited to disputes in which there are reasonable prospects that the facts could be treated differently and or where there is some legitimate dispute on the issue of law.
- [5] In the application for leave to appeal, the applicant states that the six weeks' time period is not applicable to this matter as it is a review against a Compliance Order Ruling of the second respondent.
- [6] In paragraph 4.1 of the review application, the applicant indicates that the review application is in terms of section 145⁴ of the Labour Relations Act.⁵

³ Martin and East (Pty) Ltd v NUM (2014) 35 ILJ 2399 (LAC):

This was a case which should have ended in the labour court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court a *quo* misinterpret existing law. There was no incorrect application of the facts; in particular, the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law, that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes

⁴ Section 145: **Review of arbitration awards**

(1) Any party to a *dispute* who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award -

(a) within six weeks of the date that the award was *served* on the applicant, unless the alleged defect involves the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004; or

(b) if the alleged defect involves an offence referred to in paragraph (a), within six weeks of the date that the applicant discovers such offence.

(1A) The Labour Court may on good cause shown condone the late filing of an application in terms of subsection (1).

(LRA) Therefore, the submission that it was in terms of section 158 (1) (g)⁶ of the LRA is disingenuous.

- [7] The applicant further submits that, even if the review application was in terms of section 145 (1), the Court was bound to consider a condonation application from the bar, and that no explanation for the delay is required.
- [8] The applicant further submits that the Court erred in finding that the arbitrator's ruling is reasonable, and that the ruling is in fact irrational and untenable, but does not state the facts upon which this submission is based.
- [9] In its submission, the applicant suggests that its counsel was, during the hearing, considering postponing the application to apply for condonation but the Court indicated that counsel should proceed to address the merits.
- [10] During the hearing, the Court heard argument on both the issue of the lateness of the review, the failure to apply for condonation, and the merits of the review, all of which the Court was entitled to do.
- [11] Counsel for the applicant never applied for postponement of the hearing in order to apply for condonation. It was not for the Court to prompt counsel to apply for condonation, but the Court actually drew counsel's attention to the lateness.

(2) A defect referred to in subsection (1), means -

(a) that the commissioner -

(i) committed misconduct in relation to the duties of the commissioner as an arbitrator;

(ii) committed a gross irregularity in the conduct of the arbitration proceedings; or

(iii) exceeded the commissioner's powers; or

⁵ Act 66 of 1995 as amended.

⁶ Section 158: **Powers of Labour Court**

(1) The Labour Court may –

...

(g) subject to section 145, review the performance or purported performance of any function provided for in *this Act* on any grounds that are permissible in law;

- [12] In the judgment, at paragraph 18, the Court dealt with the award and indicated why it found it to be reasonable. The applicant does not deal with this part of the judgment in its application for, and submissions on leave to appeal.
- [13] In particular, it does not indicate the basis on which the appeal court would find the award to be unreasonable
- [14] I have carefully considered the grounds upon which leave to appeal is sought, and the submissions in support of the application. I have further reflected upon my judgment and order and having considered the requirements of the law and fairness, I am not persuaded that the applicant has made out a case that another court would reasonably arrive at a decision different from the one reached by this Court. Therefore, the application for leave to appeal stands to be dismissed
- [15] In the premise, the following order is made:

Order:

1. The application for leave to appeal is dismissed:
2. There is no order as to costs.

E.S Makinta

Acting Judge of the Labour Court of South Africa