



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Not of interest to other judges

Case no: J 3020/12

JS 68/2014

J 1026/12

In the matter between

ZONDO N & 7 OTHERS

Applicants

And

ST MARTINS SCHOOL

Respondent

Date heard: **In chambers:**

Date delivered: **13 September 2017**

Summary: Application for leave to appeal

JUDGMENT - LEAVE TO APPEAL

COETZEE AJ

- [1] I made an order on 15 May 2017. I ordered that the applicants in their claim for automatic unfair dismissal, the applicants are not at liberty to proceed with the procedural unfairness allegation on trial since they haven't followed the stipulations of section 189A (18) of the Labour Relations Act¹. I made a further order on 15 May 2017 (the second order) that the applicants are to begin presenting their case with regard to the automatic unfair dismissal in the absence of an agreement to the contrary.
- [2] In the *ex tempore* judgment with reasons of 18 May 2017 I granted absolution from the instance with costs in respect of the claim for payment of money.
- [3] The applicants on 5 June 2017 filed an application for leave to appeal against those parts of the order of 15 May 2017 referred to above and the whole of the order of 18 May 2017.
- [4] The application for leave to appeal sets out the various grounds of appeal. It raises one new ground and that is that the Court has altered its judgement by "replacing" it with a "new one". This grant refers to the *ex tempore* judgement followed by the edited written judgement.
- [5] The applicant and the respondent filed written submissions in support and in opposition to the application for leave to appeal.
- [6] The application for leave to appeal is opposed.
- [7] I have considered the application and the written representations in chambers.
- [8] In terms of Rule 30 (2)

'If leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to

¹ Act 66 of 1995

appeal is sought, except that the court may, on good cause shown, extend that period'

[9] The application was made timeously.

[10] Section 17 of the Superior Courts Act, No 10 of 2013 regulates an application for leave to appeal from a decision of a High Court. It reads as follows:

'17. Leave to appeal.—

(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;

(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'.

[11] This section also applies to applications for leave to appeal in the Labour Court.²

[12] The Court in *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others*³ conveniently summarised the approach to an application for leave to appeal:

'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. As the respondents observe, the use of the word "would" in s17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community*

² Section 151 of the Labour Relations Act, Act 66 of 1995

³ JR1170 /2013 unreported

and Others v Crocodile Valley Citrus Company (Pty) Ltd and Another (75/2008) [2015] ZALCC 7 (28 July 2015). 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 (See the judgment by Davis, JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp, J in *Oasys Innovations (Pty) Ltd v Henning and Another* (C 536/15, 6 November 2015) and also *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others*⁴.'

- [13] I do not intend to deal with each of the grounds of appeal separately.
- [14] The Court didn't "replace" the *ex tempore*-judgement. It was merely followed up in writing. This is permissible⁵.
- [15] The applicants submit that the Court erred in making an order that the applicants are limited to dispute the substantive fairness of their alleged automatically unfair retrenchment.
- [16] It is common cause that the retrenchment occurred in accordance with section 189A. It is further common cause that the applicants did not approach the Labour Court in terms of section 189A (13).
- [17] There is no substance in this ground of appeal.
- [18] The applicants submit that the court erred in various respects in granting absolution from the instance.
- [19] The applicants have not raised any material grounds other than those issues raised in the hearing of the matter which matters were addressed in the reasons for the judgment.

⁴ (2016) 37 ILJ 1485 (LC)

⁵ S v Wells 1990 (1) SA 816 Eight at 819 G – 82 G

[20] In my view after careful consideration of the applicant's stated grounds for leave to appeal and the submissions, there is nothing that persuades me that any appeal would have a reasonable prospect of success.

[21] There are no other compelling reasons why leave to appeal should be granted.

[22] I ordered the applicants in the trial to pay the costs. There is, however, no reason why a cost order should be made in this application for leave to appeal.

[23] I make the following order:

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

Coetzee AJ

Acting judge of the Labour Court

Representation:

For the applicants: Advocate M S Sebola

Instructed by: Ramaite-Nesengani Attorneys

For the Respondent: Nothnagel Attorneys

LABOUR COURT