



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR2680/13

In the matter between:

ALPINE SWISS FOODS CC

Applicant

and

FOOD AND ALLIED WORKERS UNION

OBO MUNYANI, ELLA & 11 OTHERS

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

TELADIA, SHAHID N.O

Third respondent

Delivered: 22 September 2017

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

- [1] This is an application for leave to appeal against the whole of the judgement delivered by this court on 4 August 2017 when the court dismissed, with costs, an application to review and set aside a rescission ruling made by the third respondent on 5 December 2013.
- [2] The test to be applied is that set out in section 17 of the Superior Courts act, 10 of 2013. Leave to appeal may only be granted in circumstances where the appeal would have a reasonable prospect of success. This court has held that this is not a test to be applied lightly and that the statutory imperative of expeditious dispute resolution requires appeals to be limited to those matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is a legitimate dispute on the law.
- [3] Nothing raised in the applicant's grounds for appeal meets these criteria or adds anything to what was argued in the review application. I accordingly deal with only some of the grounds for appeal raised in the present application. In particular, and in regard to the second ground of appeal concerning the telephone call made to Lewis by the CCMA prior to the hearing in question, the applicant did not deny that it has an employee by that name, nor did it dispute that Lewis was in contact with the CCMA on 16 September 2013. The fact of the telephone conversation is also not in dispute. Further, the fact that the applicant was aware of the hearing date is not in dispute – the applicant submitted only that it did not receive notification of the hearing in the form in which it contends it was entitled. Again, the issue was whether the applicant had been notified of the hearing, not whether it received a notice of set down by means of one of the methods of service for which it contends. As the court held, proof of registered mail from the post office and the undisputed telephone conversation between the CCMA and Lewis, constituted sufficient proof that the applicant was indeed aware of the hearing.

[4] In my view, an appeal would not have a reasonable prospect of success and the application stands to be dismissed. There is no reason why costs would not follow the result.

I make the following order:

1. The application for leave to appeal is dismissed, with costs.

André van Niekerk
Judge