



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Not Reportable

Case no: JR 1643 / 15

In the matter between:

**RAMANATHAN KUTHALAM PARAMASIVAN**

**Applicant**

and

**COMMISSION FOR CONCILIATION, MEDIATION**

**AND ARBITRATION**

**First Respondent**

**M TSATSIMPE N.O. (AS ARBITRATOR)**

**Second Respondent**

**SYSINT TECHNOLOGIES (PTY) LTD**

**Third Respondent**

**OCCUPATIO BUSINESS SERVICES (PTY) LTD**

**Fourth Respondent**

**Heard:        Considered in Chambers**

**Delivered:   28 November 2017**

**Summary:    Application for leave to appeal – non-compliance with Practice  
Manual – application dismissed**

**Application for leave to appeal – no proper case for leave to appeal made out –  
application dismissed**

---

## JUDGMENT

---

SNYMAN, AJ

### Introduction

- [1] The current applicant for leave to appeal was also the applicant in a review application brought in this Court, seeking to review and set aside an arbitration award made by the second respondent in her capacity as an arbitrator of the Commission for Conciliation, Mediation and Arbitration (the first respondent).
- [2] The review application was argued before me on 9 November 2016, and in a judgment handed down on 15 August 2017, I dismissed the applicant's review application with no order as to costs. The applicant then filed an application for leave to appeal on 5 September 2017.
- [3] Clause 15 of the Practice Manual applies to applications for leave to appeal. In particular, clause 15.2 provides:
- 'Within 10 days of the filing of the application for leave to appeal, the party seeking leave must file its submissions in terms of Rule 30(3A) and the party opposing the leave must file its submissions five days thereafter. ...'
- [4] The applicant did not file such written submissions, despite written notice by my associate on 11 September 2017 to the applicant, drawing the applicant's attention to clause 15 of the Practice Manual and calling on the applicant to file written submissions.
- [5] Further in terms of clause 15.2 of the Practice Manual, it is provided 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.

### Failure to comply with the Practice Manual

[6] It is clear that the applicant did not comply with the Practice Manual, in that the applicant never filed written submissions as required, and actually directed to do. The situation is compounded by the fact that the third respondent's attorneys in fact wrote to the applicant's attorneys on 10 October 2017, recording the applicant's failure to file the written submissions concerned, and then enquiring when the same will be filed. On 12 October 2017, the applicant's attorneys answered and said the submissions would be filed on 16 October 2017. Not only were no written submissions forthcoming from the applicant's attorneys as promised, but they then withdrew as attorneys on 8 November 2017. So, and as matters stand, we are now more than two months later, with no further progress and no written submissions filed.

[7] The applicant is obliged to comply with the provisions of the Practice Manual, which is not just some or other guideline which parties can adhere to at their leisure. As said in *National Education Health and Allied Workers Union on behalf of Leduka v National Research Foundation*<sup>1</sup>:

The Practice Manual is binding on litigating parties and must be complied with. It is not just a guideline, but an actual prescript. ...'

[8] In *Ralo v Transnet Port Terminals and Others*<sup>2</sup> the Court similarly held as follows:

'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.'

---

<sup>1</sup> (2017) 38 ILJ 430 (LC) at para 13. See also *See Tady Trading CC t/a Tady Consulting Services v Steiner and Others* (2014) 35 ILJ 1672 (LC) at para 11; *Butana v SA Local Government Bargaining Council and Others* [2016] JOL 36088 (LC) at paras 8-9; *Edcon (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others: In re Thulare and Others v Edcon (Pty) Ltd* (2016) 37 ILJ 434 (LC) at para 24; *3G Mobile (Pty) Ltd v Raphela NO and Others* [2014] JOL 32479 (LC) at para 36.

<sup>2</sup> (2015) 36 ILJ 2653 (LC) at para 9.

- [9] 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.<sup>3</sup> But at best for the applicant, the absence of written submissions meant that his application for leave to appeal stood unmotivated.
- [10] The applicant's application for leave to appeal thus falls to be dismissed on the above grounds alone, irrespective of any consideration of prospects of success. However, and for the sake of being complete, I will nonetheless consider the merits of the application for leave to appeal, on the basis of the grounds advanced by the applicant in the application for leave to appeal.

#### Leave to appeal

- [11] 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 would come to a different conclusion to that of the Court *a quo*, or in other words the appeal would have a reasonable prospect of success.<sup>4</sup> As said in *South African Clothing and Textile Workers Union and Others v Stephead Military Headwear CC*<sup>5</sup>:

'It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. ...'

<sup>3</sup> See *Ndebele v South African Police Service and Another* [2017] ZALCJHB 251 (4 July 2017) at para 7.

<sup>4</sup> See Section 17(1)(a) of the Superior Courts Act 10 of 2013; *Molefe v MMARAWU and Others* [2017] ZALCJHB 337 (13 September 2017); *Mbawuli v Commission for Conciliation, Mediation and Arbitration and Others* [2017] ZALCJHB 275 (1 August 2017); *Glencore Operations South Africa (Pty) Ltd v NUM obo Maripane and Others* [2017] ZALCJHB 147 (11 May 2017).

<sup>5</sup> [2017] JOL 37932B (LC) at para 7.

- [12] In *Seathlolo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*<sup>6</sup> the Court also considered the above test for leave to appeal and added:

‘ ... 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 ...’

- [13] And in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*<sup>7</sup> the Court described ‘reasonable prospects of success’ as follows:

‘Once again it is necessary to say that leave to appeal, especially to this Court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal *would* have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’

- [14] As a general proposition, and in the application for leave to appeal, the applicant simply repeats the same argument presented to me when the matter was originally argued. The fact that the applicant clearly thinks I am wrong, does not mean that there is prospects of success on appeal. I have properly dealt with all of these issues in my original judgment. With nothing new being said about this, I remain unconvinced that the applicant has a prospect of

<sup>6</sup> (2016) 37 ILJ 1485 (LC) at para 3.

<sup>7</sup> [2016] JOL 36940 (SCA) at paras 16 – 17. Also compare *Smith v S* [2011] JOL 26908 (SCA) at para 7; *Greenwood v S* [2015] JOL 33082 (SCA) at para 4; *Kruger v S* [2014] JOL 31809 (SCA) at para 2.

success on appeal, and that there exists any reasonable prospect that another Court could come to a different conclusion.

[15] The applicant complains that I have placed undue emphasis on the contractual arrangement between the parties as evidenced by the specific contracts signed. But I do not believe there is any substance in such a contention. As I have illustrated in my judgment, which reasons I will not repeat again, the current prevailing authority is that what has been agreed to between parties should not just simply be ignored. A clear example of this is the judgment of the Labour Appeal Court in *Enforce Security Group v Mwelase and Others*<sup>8</sup>. I simply can see no reasonable prospect that another Court could come to a different conclusion in this respect.

[16] What the applicant continuously fails to appreciate is that the fourth respondent, Occupatio, never disputed that it was the employer of the applicant. Virtually everything the applicant seeks to rely on in the application for leave to appeal could competently serve to prove Occupatio was his employer, but as said this was not in issue. There is simply very little to contradict that the third respondent, SysInt, was not his employer, and I remain unconvinced that anything said in the application for leave to appeal would create a reasonable prospect of success of an appeal Court finding otherwise.

[17] All said, the applicant has simply made out no proper case for leave to appeal. I thus conclude that the applicant, overall, has shown no reasonable prospect that another Court could come to a different conclusion, has no realistic prospects of success on appeal, and accordingly the leave to appeal application must fail.

[18] As to costs, I intend to follow the same approach I have adopted in my original judgment, and make no order as to costs.

#### Order

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

---

<sup>8</sup> [2017] ZALAC 9 (25 January 2017) at para 24.

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

---

S Snyman

Acting Judge of the Labour Court

Appearances:

For the Applicant:

In person

For the Third Respondent:

Cliffe Dekker Hofmeyr Inc Attorneys