



Of interest to other judges

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

Case No: J 1862/17

In the matter between:

BRENDA SEKHUTE

First Applicant

KGABO SEBOLA

Second Applicant

TEBOHO MOFOKENG

Third Applicant

and

**EKHURULENI HOUSING COMPANY
SOC**

Respondent

BRENDA SEKHUTE

First Applicant

In re:

KGABO SEBOLA

Second Applicant

TEBOHO MOFOKENG

Third Applicant

MOLOKO BAHOLO

Fourth Applicant

MACSEAN FAVER

Fifth Applicant

PORTIA MOKHELE

Sixth Applicant

RAPAPA MAMOEPI

Seventh Applicant

and

**EKHURULENI HOUSING COMPANY
SOC**

Respondent

Delivered: 24 January 2018

Summary (application for leave to appeal – grounds of appeal grossly misrepresenting clear findings of the court – unprofessional to advance such grounds - leave to appeal granted on point of law – costs refused for raising disingenuous grounds of appeal)

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE J

Background

- [1] This is an application for leave to appeal against the judgement handed down on 5 September 2017 in this matter. The application is brought only by the first and second applicants in the original urgent application.
- [2] Without repeating the main grounds of appeal, I will address each one of them briefly below.
- [3] Firstly, the applicants claim the court did not decide whether the application was urgent and accordingly should rather have struck it off the roll. This ground is patently absurd as it is obvious both from the first paragraph of the judgement and the nature of the order dismissing the application that the matter was heard as one of urgency.
- [4] Secondly, the applicants claim the court erred in making a cost award against them because it disregarded their efforts to resolve the matter internally. It is apparent that the applicants fail to appreciate that their refusal to accept that they were liable to refund moneys they were obviously not entitled to and to launch the application under those circumstances was more than sufficient reason to award costs against them, irrespective of whether they had tried to resolve it internally beforehand.

- [5] Thirdly, the applicants now claim that the court failed to appreciate that their right to fair administrative action was violated because they were not told of the reasons for the deductions from their remuneration nor given an opportunity to make representations before they were implemented. The simple point to make in regard to this ground of appeal is that the application was not one of the administrative review, nor did the applicants plead such a cause of action in their papers. Indeed, the fact that this was not the applicants' case was explicitly referred to in paragraph [15] of my judgement. Accordingly, the court was not required to consider a cause of action based on administrative law.
- [6] Fourthly, the applicants' claim that the Court erred in finding there was an error in calculating their remuneration because of the way that medical aid and pension fund contributions were dealt with. I am satisfied on the evidence that there is no basis for this contention as it is obvious that pension and medical aid contributions were accounted for twice in the applicants' remuneration.
- [7] The applicants contend that the court erroneously found that the first applicant had engineered the overpayment. Like the first mentioned ground of appeal, this is completely disingenuous and seriously misrepresents the court's findings: nowhere in the judgment was such a finding made. The issue only arose because of an argument advanced by the first applicant herself which I dealt with in paragraph [17]. The applicants' legal representatives ought to have cautioned their clients against making such an unsubstantiated claim, and calls their professional conduct in this regard into question.
- [8] Lastly, the applicants contend that the Court erred in interpreting sections 34 (1) (b) and 34(5) (a) Of the Basic Conditions of Employment Act. Although the applicants have not advanced this as a compelling reason of the kind mentioned in section 17(a)(ii) of the Superior Courts Act, 10 of 2013, and have not advanced any contrary authority for the interpretation of these provisions, there has been no judgement of the Labour Appeal Court dealing with the proper interpretation of these provisions and the correct interpretation thereof is of some importance to both employers and

employees. Accordingly I am inclined to grant leave on this narrow legal question alone.

Costs

- [9] The applicants are successful in only one narrow respect. Ordinarily, I would be inclined to grant them their costs nevertheless. However, their disingenuous raising of two obviously spurious grounds of appeal, which completely misrepresent the court's findings is a matter which deserves an expression of the court's disapproval. Accordingly, I am of the view they are not entitled to their costs.

Order

- [1] Leave to appeal against the judgement handed down on 5 September 2017 is granted solely on the legal question whether or not the Court erred in its interpretation of 34 (1) (b) and 34(5)(a) of the Basic Conditions of Employment Act, 75 of 1997.
- [2] Parties must pay their own costs of the application.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANTS:

S T Mosomane of
Mosomane Attorneys Inc.

RESPONDENT:

I Gwaunza of Edward
Nathan Sonnenbergs Inc.

LABOUR COURT