



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

Case No: J 889/17

In the matter between:

**BIFAWU obo W MNCUBE & 60
OTHERS**

Applicant

and

**LEGALWISE EXPENSES
INSURANCE SOUTH AFRICA t/a
LEGALWISE**

Respondent

Delivered: 24 January 2018

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

- [1] The applicant in this matter has applied for leave to appeal against the judgment handed down in an exception ruling in which I upheld the exception and dismissed the applicant's statement of claim with costs.
- [2] The respondent had objected to the applicant's statement of case filed on 18 April 2017 on the basis that it fails to disclose a cause of action. The

applicant decided to oppose the exception, instead of seeking to amend its statement of case.

- [3] In terms of section 17 (1) (h) (i) of the Superior Courts Act, 10 of 2013, aside from other circumstances which are not applicable in this case, leave to appeal may only be granted if a judge is of the opinion that the appeal would have “a reasonable prospect of success”. That does not mean that merely because another court might come to a different conclusion leave to appeal should be granted. The court must also consider if such a result is not merely a theoretical possibility but there is some likelihood that this would be the case.
- [4] In *Seathlolo & others v Chemical Energy Paper Printing Wood & Allied Workers Union & others*¹ this court summarised the approach to be adopted to applications for leave to appeal under s 17:

“As the respondents observe, the use of the word 'would' in s 17(1)(a)(i) is 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 & others v Crocodile Valley Citrus Co (Pty) Ltd & 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 & East (Pty) Ltd v National Union of Mineworkers & others* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR I 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning & another* (C536/15 6 November 2015).”

¹ (2016) 37 ILJ 1485 (LC)

- [5] Having read the application for leave to appeal, which appears to be unopposed, I am not persuaded that the applicant has advanced any argument in relation to the interpretation of what was contained in its statement of case, which has not been dealt with in my judgment. Further, I am unable to find that there is a reasonable prospect, and not a mere possibility, that another court might come to a different conclusion on those issues.

Order

- [1] The application for leave to appeal is dismissed.
- [2] No order is made as to costs.

R Lagrange

Judge of the Labour Court of South Africa