



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 06/16

In the matter between:

ROAD TRAFFIC MANAGEMENT CORPORATION

Applicant

and

**THE COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

ELSABE HARMSE N.O

Second Respondent

B MOTJOTOA

Third Respondent

Decided: In Chambers

Delivered: 8 February 2018

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO. J

Introduction

- [1] On 19 October 2017 this Court handed down judgment in terms of which the Applicant's review application was dismissed with costs.
- [2] The Respondents filed an application for leave to appeal against the whole of the judgment and order of this Court. The application was filed 11 days out of

time and the Applicant seeks condonation for the late filing of the application for leave to appeal. I have considered the condonation application and condonation is granted for the late filing of the application for leave to appeal.

- [3] The application for leave to appeal is opposed.
- [4] Both parties have filed submissions in respect of the leave to appeal. I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

The test for leave to appeal

- [5] It is trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. What the test requires is the reasonable likelihood that another court, presented with the same facts and evidence as this Court, could come to a different conclusion than the one arrived at by this Court.
- [6] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment of where there is some legitimate dispute on the law.
- [7] In *Seatholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*¹ this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

“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 and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015]

¹ (2016) 37 ILJ 1485 (LC).

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)".

- [8] In deciding this application for leave to appeal I am also guided by the *dicta* of the Supreme Court of Appeal where it held in *Dexgroup (Pty) Ltd v Trustco Group*² that:

" The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal."

Grounds for leave to appeal

- [9] In the review application, the Applicant raised only one ground for review and this was in respect of the amount of compensation awarded. During argument counsel for the Applicant made material concessions and the Applicant's case boiled down to nothing more than a complaint that the compensation awarded was 'too much'.
- [10] I have read and considered the Applicant's grounds for leave to appeal and having considered those and applying the aforesaid principles applicable to applications such as this one, I am not persuaded that there are reasonable

² Unreported judgment of the Supreme Court of Appeal (687/12) [2013] ZASCA 120 (20 September 2013).

prospects that the Labour Appeal Court would arrive at a different conclusion than that arrived at by this Court.

- [11] I do not intend to repeat or address all the grounds for appeal raised by the Applicant, but to illustrate that the application for leave to appeal is without merit, I will deal with some grounds for leave to appeal in detail.
- [12] The Applicant's grounds for leave to appeal are *inter alia*, that this Court erred in not reviewing the award when grounds to do so existed in the review application. In view of the concessions that were made in Court and the fact that the review was no more than mere unhappiness with the compensation awarded, there is no merit in this ground for appeal.
- [13] The Applicant also submitted that I erred in only looking at the personal circumstances faced by the Third Respondent upon termination of his employment as proper factors that were considered by the arbitrator when other factors which ought to have been considered were not considered.
- [14] A proper perusal of the judgment handed down on 19 October 2017 shows that this ground for leave to appeal is without merit. In its review application, the Applicant did no more than to make a bold and unsubstantiated allegation that the arbitrator failed to take into account relevant factors in deciding just and equitable compensation, which Mr Botha conceded was without merit. The issue about the discretion of the arbitrator to exercise a discretion in awarding compensation was fully addressed in the judgment.
- [15] I have fully dealt in detail with the relevant issues in my judgment and there is no need to repeat what is stated therein for purposes of this judgment. Grounds for leave to appeal and submissions are meant to persuade me that there are reasonable prospects that another court would arrive at a different decision. *In casu*, I am not persuaded that there is a case made out for leave to appeal to be granted and the Labour Appeal Court should not be burdened with an appeal that lacks merit.
- [16] In the result, I make the following order:

Order

1. The late filing of the Applicant's application for leave to appeal is condoned;
2. The application for leave to appeal is dismissed with costs.

Connie Prinsloo

Judge of the Labour Court