



Not reportable

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

Case No: JR 2319/17

In the matter between:

JBC ROOF COVER (PTY) LTD

Applicant

and

MBONGENI MOTSOENENG N.O.

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION
(NO)**

Second Respondent

ADRIAAN JOHANNES DIEDERICKS

Third Respondent

Delivered: 16 February 2018

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE J

Background

- [1] This is an application for leave to appeal against the judgment delivered on 15 December 2017. The application for leave to appeal was only filed on 4 January 2018. It was filed within 15 court days and accordingly is not late as claimed by the respondent.
- [2] Having considered the application, it is clear that the essence of the appeal is that the applicant seeks to contend that the contract signed by the respondent was the exclusive memorial of his terms of employment. I am satisfied for the reasons in my judgment that was not the case on the facts.
- [3] The current principles governing leave to appeals were dealt with 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:

“[2] The test to be applied in an application such as the present is that referred to in s 17 of the Superior Courts Act 10 of 2013. Section 17(1) provides:

'Leave to appeal may only be given where the judge or judges concerned are of the opinion that —

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'

[3] 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 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

¹ (2016) 37 ILJ 1485 (LC)

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 369 (SCA)* and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning & another* (C536/15 6 November 2015).²

[4] In applying the above test I am satisfied that there is no reasonable likelihood another court would come to a different conclusion.

Order

The application for leave to appeal is dismissed.

Lagrange J
Judge of the Labour Court of South Africa
(In chambers)

² At 1486