



Not Reportable

Case NO: JR 1922/13

In the matter between:

BOMBELA OPERATING COMPANY

Applicant

and

JACKSON MTHUKWANE N. O

First Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Second Respondent

UTATA SARHWU

Third Respondent

CLIFFORD MORAKE

Fourth Respondent

Decided: In Chambers

Delivered: 6 March 2018

JUDGMENT: LEAVE TO APPEAL

TLHOTLHALEMAJE, J

- [1] The applicant's application to review and set aside the arbitration award issued by the first respondent (the Commissioner) was dismissed in a judgment handed down on 30 January 2018. In dismissing the application, the

Court further amended the Commissioner's award to reflect a sanction of a final written warning to be issued to the fourth respondent.

[2] The applicant has since filed an application for leave to appeal against the whole of the judgment and the order. The grounds on which leave to appeal is sought may be summarised as follows:

2.1. The Court erred in finding that there were no procedural irregularities in the manner in which the Commissioner conducted the arbitration proceedings, as it was apparent from the comments made by the Commissioner during the arbitration proceedings that the applicant was not afforded the opportunity to present its case.

2.2. The Court erred in not properly examining the video footage which recorded the incident complained of and of which the fourth respondent was dismissed. Should the Court have taken into consideration the footage, it would have been apparent to the Court that the assault of the complainant by the fourth respondent was of a serious nature.

2.3. The Court misdirected itself by holding that the assault was induced by provocation. The fourth respondent did not raise provocation as a defence in the arbitration proceedings. The evidence of the fourth respondent was that he became emotional and felt provoked. The Court place too much weight on this aspect and erred in concluding that the fourth respondent could be excused for conducting himself in the manner that he did.

[3] It is trite that the test in determining whether leave to appeal should be granted is whether there is a reasonable prospect that another court, and in this case, the Labour Appeal Court, would come to a different conclusion to that reached by the Court whose judgment is sought to be taken on appeal. It can further be accepted that amongst the factors to be considered with such application is whether the matter is of substantial importance to the parties and whether it is in the interest of justice to grant the application.

[4] I have had regard to the submissions made on behalf of applicant in terms of Rule 30(3A) of the Rules of this Court, and the submissions made in opposition to the application. Upon a further reflection on my judgment, I am of the view that the issues raised in the application for leave to appeal as correctly pointed out on behalf of the fourth respondent in opposing this application, have been adequately dealt with in my judgment, and no purpose would be served in revisiting them.

[5] Ultimately, I hold the view that there are no reasonable prospects that the applicant would be successful on appeal, as there are no issues raised in the application for leave to appeal that of importance, or upon which it can be said that the interests of justice require that the application be granted.

[6] I have also had regard to the requirements of law and fairness, and hold the view that even though this application was ill-considered, a costs order is nonetheless not warranted.

Order:

[7] Accordingly, the following order is made;

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

E. Tlhotlhemaje

Judge of the Labour Court of South Africa