



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS 274/16

In the matter between:

**THE NATIONAL INSTITUTE FOR THE
HUMANITIES AND SOCIAL SCIENCES (NIHSS)**

Applicant

and

KIBITI LEPHOTO

First Respondent

**THE MINISTER OF HIGHER EDUCATION AND
TRAINING**

Second Respondent

In re:

KIBITI LEPHOTO

Applicant

and

**THE NATIONAL INSTITUTE FOR THE
HUMANITIES AND SOCIAL SCIENCES (NIHSS)**

First Respondent

**THE MINISTER OF HIGHER EDUCATION AND
TRAINING**

Second Respondent

Considered: In Chambers

Delivered: 14 March 2018

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO. AJ

Introduction

[1] This is an application for leave to appeal against the whole of the judgment and order of this Court handed down on 22 November 2017. The application is opposed.

The grounds

[2] The grounds upon which the applicant relies are prolix and comprise 55 paragraphs captured in 18 pages and repeating them here will unnecessarily burden this judgment. The issues raised thereat have mainly been dealt with in the judgment. The grounds have however been summarised under the following heads, that I erred in finding that:

- 2.1 Mr Lephoto's disclosure constituted a disclosure as contemplated in the Protected Disclosures Act¹ (the Act) and a protected disclosure as contemplated by the Act;

¹ Act 26 of 2000.

- 2.2 Mr Lephoto was subjected to occupational detriment as contemplated in the Act;
- 2.3 Mr Lephoto's dismissal was not only automatically unfair, but also procedurally and substantively unfair;
- 2.4 Mr Lephoto be re-instated and awarded compensation; and
- 2.5 The Institute is liable for Mr Lephoto's costs consequent upon employment of senior counsel.

The test for granting leave to appeal

[3] This is an attempt by the applicant to argue the case afresh before the Labour Appeal Court. The test for granting an application for leave to appeal is stipulated as follows in the Superior Courts Act²:

'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.'

² Section 17 of the Superior Courts Act, 10 of 2013.

- [4] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*³ not only did Van Niekerk J confirm that the test applicable in applications for leave to appeal is more stringent but also made the following remarks:

'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] 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)'.

- [5] I have carefully and dispassionately⁴ considered the submissions made by the parties and am of the view that the applicant has argued what was argued in the main trial in this application. I am of the view that the factual matrix will not receive a different treatment on appeal. I do not intend repeating those

³ (2016) 37 ILJ 1485 (LC).

⁴ *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

submissions in this judgment but hold the view that the applicant has not made out a case for leave to be granted. The application must therefore fail.

Costs

[6] There is no reason why costs should not follow the result.

[7] In the premises, the following order is made:

Order

1. The application for leave to appeal is dismissed with costs.

MC Mamosebo

Acting Judge of the Labour Court of South Africa

Appearances

For the applicant:

Mr A Roskam

Haffegge Roskam Savage Attorneys

For the respondent:

Ms C Maphalla

Motla Conradie Inc

LABOUR COURT