



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 31/14

In the matter between:

UNIVERSITY OF VENDA

Applicant

and

KHULISO NEMADZIVHANANI

First Respondent

DONALD KGALAKE NKADIMENG N.O

Second Respondent

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

Third Respondent

Considered: In Chambers

Delivered: 15 March 2018

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO. AJ

Introduction

- [1] This is an application by the first respondent, Mr Khuliso Nemadzivhanani, for leave to appeal to the Labour Appeal Court against the whole of my judgment and orders dated 13 November 2017. The applicant, the University of Venda, was served with the Notice of Application but there is nothing in the file that shows that it is opposing this application. Their details are kept for purposes of receiving a copy of this order. For the sake of consistency, the citation of the parties shall remain as they were in the review application. Reference to the applicant will be the applicant in the founding affidavit.

The grounds

- [2] The grounds on which the first respondent relies are succinctly that I erred:
- 2.1 In my factual findings;
 - 2.2 In producing a judgment that is akin to being an appeal and not a review;
 - 2.3 I did not consider the charges against the first respondent and the outcome thereof;
 - 2.4 In substituting the commissioner's decision with my own; and
 - 2.5 In committing errors of fact when coming to my decision.

The test for granting leave to appeal

- [3] The test for granting an application for leave to appeal is stipulated as follows in the Superior Courts Act¹:

'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;

¹ Section 17 of the Superior Courts Act, 10 of 2013

(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.'

- [4] Central to the determination of applications for leave to appeal is whether there are reasonable prospects of success in the appeal. It is trite that this test raises the threshold of the test for leave to appeal.²
- [5] Regard being had to the first respondent's submissions and upon reflection of my judgment, I am not persuaded that reasonable prospects exist on appeal and this application therefore stands to fail.
- [6] In the premise, I make the following order:

Order

1. The application for leave to appeal against the judgment and order of this Court delivered on 13 November 2017 is dismissed.
- 2 I make no order as to costs.

MC Mamosebo

Acting Judge of the Labour Court of South Africa

² *Seatlholo & Others v Chemical Energy Paper Wood & Allied Workers Union & Others* (2016) 37 ILJ 1485 (LC) at para 3.

Appearances

For the applicant:

Advocate Thando Ntsokota

Instructed by:

Mr S Sithole

Bowman Gilfillan Inc

For the first respondent:

Advocate N Cassim SC

Advocate M Desai

Instructed by:

Mvundlela Attorneys

LABOUR COURT