



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 46/15

In the matter between:

SENZO MBATHA

Applicant

and

SIBANYE GOLD PROPERTY DIVISION

First Respondent

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

Second Respondent

LARRY SHEAR N.O.

Third Respondent

Considered: In Chambers

Delivered: 13 April 2018

JUDGMENT - APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO. AJ

Introduction

- [1] The applicant, Mr Senzo Mbatha, seeks leave to appeal against the whole of my judgment and order handed down on 15 November 2017 in which I dismissed his application to review and set aside the commissioner's award.

Condonation

- [2] Before dealing with the application, let me dispose of an application for condonation brought by the first respondent in terms of Rule 12(3)¹. The written submissions opposing the application for leave to appeal to this Court was filed 4 days out of time. The applicant did not oppose. It is not necessary to set out the factors that have informed my decision on this issue. Suffice it to say, on balance I take the view that condonation should be granted. See *Melane v Santam Insurance Co Ltd*².

The grounds

- [3] It will be prudent for the applicant to take cognisance of the admonition by the Labour Appeal Court in *Sasol Nitro v National Bargaining Council for the Chemical Industry and Others*³. The applicant has repeated, duplicated and paraphrased the same grounds. It is clear to me that care should be taken for him to ensure brevity, lucidity and cogency in his applications. That having been said, and as far as I could untangle the grounds the applicant contends that I erred:

- 3.1 In setting aside the award and in holding that the applicant's dismissal is substantively fair. This is not the case. I confirmed the decision by the commissioner and dismissed his application to set aside the award.
- 3.2 In not accepting the existence of a standard practice to sign off payments for incomplete work for the so-called reputable contractor.
- 3.3 In finding that the arbitrator acted reasonably.

¹ Of the Labour Court Rules as promulgated by GN 1665 in GG 17495 of 14 October 1996 as amended.

² 1962 (4) SA 531 (A) at 532C – F

³ (2017) 38 ILJ 2322 (LAC) at para 4.

The test for granting leave to appeal

- [4] The test to be applied in determining whether an application for leave to appeal should be granted or not is governed by s 17 (1) of the Superior Courts Act⁴. The questions to be asked are whether there is a reasonable prospect that the factual matrix could receive a different treatment or whether there exists a legitimate dispute on a point of law which I may have misinterpreted.
- [5] 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. See *Seatlholo & Others v Chemical Energy Paper Wood & Allied Workers Union & Others*⁵.
- [6] It is clear that the arbitration proceedings and the main judgment dealt with these issues raised in the application for leave, particularly, on the so-called reputable contractor and payments made to it before work was completed. This application is fraught with overlapping, repetition and clerical ambiguities which are incomprehensible to make out where I erred.
- [7] In the light of the above, and regard being had to the submissions by the parties with regards to the application for leave to appeal, the opposition thereto, and having reflected on my judgment dispassionately, it is my view, that the applicant has not, by any stretch of imagination, raised cogent grounds for leave to be granted. In my view, there are no reasonable prospects of success on appeal. It therefore follows that this application must fail.

Costs

- [8] Counsel for the first respondent submitted that at trial stage Sibanye Gold Property Division did not ask for costs mindful of the relationship between itself and the National Union of Mineworkers who represented the applicant during

⁴ Act 10 of 2013.

⁵ (2016) 37 ILJ 1485 (LC) at para 3.

the arbitration proceedings. In the application before me the union does not feature. It is on that basis that the first respondent asked for costs for opposing this application for leave to appeal.

[9] Costs in the Labour Court are awarded according to the requirements of the law and fairness.⁶ In the exercise of my discretion I have considered that ordering costs against the applicant may discourage those in his similar position to approach court for intervention where they require resolution of disputes. Having taken fairness into account I am of the view that it will be appropriate not to make any cost order.

[10] In the premise, I make the following order:

Order:

1. Condonation is granted.
2. The application for leave to appeal against the judgment and order of this Court delivered on 15 November 2017 is dismissed.

MC Mamosebo
Acting Judge of the Labour Court of South Africa

⁶ Section 162 (1) of the LRA.

Appearances

For the applicant:

Mr ES Makinta of ES Makinta Attorneys

For the first respondent:

Advocate F Venter

Instructed by:

Solomon Holmes Attorneys

LABOUR COURT