



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

Case no: JR 671/2016.

THABANG MAMPANE N.O

First Applicant

NATIONAL LOTTERIES COMMISSION

Second Applicant

THE BOARD OF THE NATIONAL

LOTTERIES COMMISSION

Third Applicant

KHAU MOLOKO N.O

Fourth Applicant

and

THE NATIONAL UNION OF PUBLIC

SERVICE AND ALLIED WORKERS

("NUPSAW")

First Respondent

KELEBOGILE MOKGATLHA

Second Respondent

In re:

THE NATIONAL UNION OF PUBLIC

SERVICE AND ALLIED WORKERS

("NUPSAW")

First Applicant

KELEBOGILE MOKGATLHA

Second Applicant

and

THABANG MAMPANE N.O

First Respondent

NATIONAL LOTTERIES COMMISSION

Second Respondent

THE BOARD OF THE NATIONAL

LOTTERIES COMMISSION

Third Respondent

KHAU MOLOKO N.O

Fourth Respondent

Delivered: 11 May 2018

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE J

Introduction

[1] This is an application for leave to appeal against a judgement handed down on 18 January 2018. In that judgement, I had found that the fourth applicant's decision of 31 March 2016 to refuse to deviate from the decision of the first applicant on 18 November 2015 to deploy the applicant to Kwa Zulu Natal and, or alternatively, to dismiss the second applicant's appeal against that decision was *ultra vires* and therefore null and void. I further remitted the decision for reconsideration by the first applicant, *albeit* that by the time the review was argued the issue might already have been moot.

[2] In essence, although I accepted that there was a binding agreement on the redeployment process to be adopted following the restructuring of the

Lotteries Board, I did not accept that the agreement about the process disposed of whether the final decision to deploy the second respondent to Kwa-Zulu Natal was reviewable.

Summary of grounds of appeal

- [3] The applicants contend that I erred in this respect because the binding agreement included agreement on the transfer of the second respondent.
- [4] The applicants further contend that I erred in not finding that the first applicant had confirmed and, or alternatively, ratified the decision of 18 November 2015, even though the decision which was being challenged was the decision taken by the fourth applicant on 31 March 2016 not to deviate from the November decision.
- [5] Further, the applicants contend that I erred in not finding that the first applicant had delegated authority to the fourth applicant to consider the deviation, solely on the basis of the first applicant's say-so in her answering affidavit. Lastly, they contend that I should have had regard to section 2D of the lotteries act 57 of 1997, which *inta alia* sets out the Commissioner's power of delegation, rather than clause 9 of the Relocation Policy of the second applicant which states that:

“The board delegates authority to consider written requests for deviation from this policy to the CEO.”

Evaluation

- [6] On the question of whether or not there was effectively a collective agreement confirming the second respondent's redeployment to Kwa-Zulu Natal, which was binding on the second respondent, there is some prospect that another court may come to a different conclusion on that and for that reason I would grant leave to appeal.
- [7] In relation to the other reasons regarding the ratification of the decision and whether or not the first applicant had delegated authority to the fourth applicant to consider the deviation application, I am doubtful that another court is likely to come to a different decision. Nonetheless, having granted leave to appeal on the first ground there is no reason to deprive the

applicants of leave to appeal on the other grounds, especially as the application for leave to appeal is an unopposed.

Order

- [8] Leave to appeal against the judgement in this matter handed down on 18 January 2018 is granted.
- [9] No order is made as to costs.

Lagrange J
Judge of the Labour Court of South Africa
(In Chambers)
11 May 2018