



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 2800/16

In the matter between:

RAND REFINERY LTD

Applicant

and

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

First Respondent

DUMISANI JOHANNES NGWENYA N.O

Second Respondent

ABDULLAH KHAN

Third Respondent

Decided: In chambers

Delivered: 18 May 2018

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

NKUTHA-NKONTWANA. J

Introduction

- [1] This is an application for leave to appeal brought by the applicant (Rand Refinery), against the whole judgment and order handed down by this Court on 20 March 2018. Rand Refinery, a third respondent in the judgment,

unsuccessfully opposed the review application by the third respondent (Mr Khan), the applicant in the judgment. I found that the second respondent misdirected himself by ignoring the material facts before him and as such rendered an unreasonable award. I, accordingly, reviewed and set aside the award dated 28 November 2016 under case number 4469-16 and substituted it with an order that Mr Khan's dismissal was unfair and awarded compensation equivalent to seven months' salary.

Grounds of appeal and analysis

- [2] The application is pegged on several grounds of appeal as articulated in the amended notice of the application for leave to appeal and I do not intend repeating them in this judgment. Mainly, Rand Refinery's impugn is essentially that I erred in substituting the award with the order that Mr Khan's dismissal was unfair instead of remitting the matter back to the first respondent.
- [3] It is trite that the applicable test in an application for leave to appeal 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. However, the Labour Appeal Court (LAC) has cautioned this Court that the test ought not be applied unconscientiously in light of the statutory imperative of expeditious resolution of labour disputes. In *Martin and East (Pty) Limited v National Union Mineworkers and Others*,¹ per Davis JA, LAC commented as follows:

...The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the court *a quo*, need to be cautious when leave to appeal is granted, as should this Court when petitions are granted.

There are two sets of interests to consider. There are the interests of the parties such as appellant, namely who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to

¹ [2013] ZALAC 35; (2014) 35 ILJ 2399 (LAC) page 16 lines 12 - 25 and page 17 lines 1 – 18; See also *National Union of Metalworkers of South Africa and Others v Columbus Stainless* [2016] ZALCJHB 344 at paras 2-3.

a different conclusion. There are also the rights of employees who land up in a legal “no-man’s-land” and have to wait years for an appeal (or two) to be prosecuted.

This was a case which should have ended in the labour court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court *a quo* misinterpret existing law. There was no incorrect application of the facts; in particular, the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law, that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.’ (Emphasis added)

- [4] Turing to the facts in the present matter, having read the record, the award and the pleadings, it became clear that, to the large extent, the facts are common cause. I was also convinced that the matter could be decided on the basis of undisputed and objective facts, notwithstanding the limping state of the record. As such, the credibility of the witnesses was irrelevant.
- [5] It is not clear what would have been the benefit of remitting the matter back to the first respondent when Rand Refinery witnesses, particularly, Mr Moeng, corroborated Mr Khan’s evidence that the atmosphere during the grievance meeting was not conducive for a meaningful discussion hence the respite. Even the attempt to reconvening the grievance meeting subsequent to Mr Khan’s disciplinary hearing which had already found him guilty and recommended his dismissal was fatal to Rand Refinery’s case of intimidation.
- [6] Clearly, my approach accords with the practice in this Court and the LRA’s imperative for expeditious resolution of labour disputes. In this present case,

unlike the authorities referred to by the Rand Refinery, the record does exist and, in any event, the facts are mainly common cause.

[7] Having considered all the grounds of leave to appeal, I am not convinced that Rand Refinery made out a case that another Court might reasonably arrive at a decision different to the one reached by this Court. The application for leave to appeal should, therefore, be refused. I make no order as to costs.

[8] The following order is made:

Order

1. The application for leave to appeal against the judgment handed down on 20 March 2018 is dismissed.
2. There is not order as to costs.

P. Nkutha-Nkontwana
Judge of the Labour Court of South Africa