



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 465/15

In the matter between:

GOVAN MBEKI LOCAL MUNICIPALITY

Applicant

and

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

First Respondent

ARBITRATOR N.H MATSEPE

Second Respondent

SOUTH AFRICAN MUNICIPAL WORKERS UNION

obo MASHININI M.E

Third Respondent

Decided: In Chambers

Delivered: 10 July 2018

JUDGMENT: LEAVE TO APPEAL

MAHOSI J

Introduction

[1] This is an opposed application for leave to appeal against the whole judgment and orders of this Court handed down on 31 January 2018 in terms of which the Court held as follows:

‘1. The arbitration award is reviewed and set aside and substituted with the following order:

1.1 The third respondent's dismissal was substantively fair, but procedurally unfair.

1.2 The applicant is ordered to pay the third respondent's compensation equivalent to his salary for three months at his rate at the time of dismissal.

2. Each party is to pay its own costs.’

[2] Before me, is also an application for condonation for the late filing of the leave to appeal. The respondent opposes the application.

[3] For sake of convenience, the parties are cited as they were in the review application.

Condonation

[4] In terms of Rule 30(2) of the Labour Court Rules, the third respondent was required to file this application within 15 days of the date of judgment or order. As aforesaid, the judgment was handed down on 31 January 2018. The last day on which the application for leave to appeal was required to be filed was 15 February 2018. However, the application for leave to appeal was only served and filed on 15 March 2018. The application for leave to appeal was therefore filed 40 days out of the prescribed time limits.

[5] On 20 April 2018, the third respondent delivered submissions in respect of the application for leave to appeal and the condonation application for the late filing

of the application for leave to appeal. On 26 April 2018, the applicant delivered answering submissions in respect of the application for leave to appeal and opposed the condonation application.

- [6] Having considered the application for condonation, the late filing of the application for leave to appeal and the late filing of the submissions in respect of the leave to appeal is condoned.

The test for leave to appeal

- [7] In determining whether to grant an application for leave to appeal, the traditional test is whether there is a reasonable prospect that another court may come to a different conclusion.¹ In terms of section 166(1) of the Labour Relations Act (LRA),² a party to proceedings before the Labour Court, may apply to the Labour Court for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. Section 17 of the Superior Court Act,³ which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

'Leave to appeal may only be given where the judge or judges 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 decisions sought on appeal does not fall within the ambit of section 16(2)(a); and

¹ See *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC) at 2890B; *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC) at 1443 para 2 and *Tsotetsi v Stallion Security (Pty) Ltd* (2009) 30 ILJ 2802 (LC) at 2804 para 14.

² Act 66 of 1995 as amended.

³ Act 10 of 2013.

- (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 issue between the parties.’

[8] Section 16(2)(a) of the Superior Court Act provides as follows:

- ‘(i) When at the hearing of the appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.
- (ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.’

[9] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*,⁴ the LAC made it clear that leave to appeal is not simply there for the taking, and that this Court must be cautious in granting leave to appeal and in assessing the requirement of the prospect of success. In this case, the Court stated 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 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

⁴ (2014) 35 ILJ 2399 (LAC).

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.’⁵

- [10] The third respondent raised a number of grounds of appeal but in essence, its submission was basically that the Court erred in coming to the conclusion of reviewing and setting aside the arbitration award of the second respondent and making a finding that the third respondent's dismissal was substantively fair. Further that the Court erred in admitting and referring to evidence that was not relevant for purposes of the review application.
- [11] The applicant submitted that there are no discrepancies that exist between the findings made by this Court and the evidence presented by the applicants during both the arbitration hearing and the review application.
- [12] Having had regard to the third respondent's submissions, I am not persuaded that there are reasonable prospects of a successful appeal. As such, I am of the view that this application is without merit and must be dismissed.
- [13] Accordingly, I make the following order:

Order

1. The condonation application for late filing of the application for leave to appeal is granted.
2. The application for leave to appeal is dismissed.
3. There is no order as to costs.

⁵ At 2405-2406.

D. Mahosi

Judge of the Labour Court

LABOUR COURT