



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 980/18

In the matter between:

NORTH-WEST DEVELOPMENT

CORPORATION (NWDC)

Applicant

and

ABIEL MOHLAHLO

First Respondent

SHERIFF MAHIKENG (MR. H.C. ACKERMAN N.O)

Second Respondent

Decided: In Chambers

Delivered: 23 August 2018

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

MAHOSI J

Introduction

- [1] This is an opposed application for leave to appeal against the portion of the judgment and an order of this Honourable Court handed down on 26 April 2018 in terms of which the applicant's application was struck off the roll and the court ordered the applicant's attorney, Mr Henk Wissing, to pay the first respondent's costs incidental to this application *de bonis propriis* on the scale as between attorney and client.

The applicable law and analysis

- [2] In determining whether to grant an application for leave to appeal, the 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;

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.

- (b) the decisions 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 issue between the parties.’

[3] 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.’

[4] 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.

⁴ (2014) 35 ILJ 2399 (LAC).

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.⁵

- [5] The applicant raised a number of grounds of appeal but in essence, its submission is basically that the Court erred in misinterpreting the Court Order granted by Judge Gush on 5 April 2018, in dealing with the issue of urgency and further in striking the matter off the roll with costs.
- [6] The applicant further submitted that the Court erred in finding that grounds existed for punitive *de bonis propriis* costs to be ordered against the applicant's representative, as another Court had accepted the bond of security and stayed the sale in execution. The applicant submits that another Court could find that the order as to costs was erroneously made under the circumstances.
- [7] The first respondent submitted that Mr. Henk Wissing acted dishonestly by placing before the Court misleading and false information and by withdrawing the pending application after this matter was instituted so that the first respondent would not be able to raise *lis pendens* point. Further that the applicant misled the court by submitting that the only issue to be decided was the issue of security. The applicant further submitted that the Court had to show its displeasure against such conduct by ordering the costs *de bonis propriis*. The first respondent's view

⁵ At 2405-2406.

is that there are no prospects of success on appeal as it is the discretion of the Court to order costs.

[8] Having had regard to parties' submissions, I am not persuaded that there are reasonable prospects that the Labour Appeal Court could come to a different conclusion

[9] Accordingly, I make the following order:

Order

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

D. Mahosi

Judge of the Labour Court

Appearances:

For the applicant:

For the third respondent:

LABOUR COURT