



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 1328/14

In the matter between:

NATIONAL EDUCATION HEALTH AND

ALLIED WORKERS UNION o.b.o SIPHO GXOTHA

Applicant

and

COMMISSIONER M. VAN AARDE N.O

First Respondent

GENERAL PUBLIC SERVICE

SECTORAL BARGAINING COUNCIL .

Second Respondent

OFFICE OF THE PREMIER: NORTHERN

CAPE PROVINCE

Third Respondent

Decided in Chambers

Delivered: 12 October 2018

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J:

- [1] The applicant's application to review and set aside the arbitration award issued by the first respondent was dismissed in a judgment delivered on 3 August 2018. On 20 August 2018, the applicant launched an application for leave to appeal against the whole judgement.

- [2] The applicant further filed an application for condonation for the purported late filing of the application for leave to appeal. The third respondent filed two notices of its intention to oppose both the application for condonation and leave to appeal.
- [3] In terms of the provisions of sub-rule 30(2) of the Rules of this Court, the applicant in an application for leave to appeal is required to file the prerequisite notice of application for leave to appeal within 15 days from the date of the judgment. The non-compliance with the time-frames provided in terms of the sub-rule may be extended on good cause shown by the party seeking condonation. It is trite that the computation of the time-frames in terms of the Rules excludes the first-day, weekends and public holidays, but includes the last day.
- [4] In this case, the judgment was delivered on 3 August 2018 and the application for leave to appeal was filed on 20 August 2018. This was well within the 15 days' time-period provided for in terms of the Rules of this Court and thus an application for condonation was not necessary.
- [5] The applicant has advanced various grounds in support of the application for leave to appeal. He contends *inter alia* that the Court misdirected itself by failing to conclude that the Commissioner committed an irregularity on account of his failure to properly analyse the evidence, or omitted to consider or have regard to the evidence of certain witnesses or certain material information. The applicant further contended that the Court misdirected itself by not holding that the first respondent misconceived the nature of the inquiry before him.
- [6] The test to be applied in an application for leave to appeal is fairly trite. It entails a consideration of whether there are reasonable prospects that the appeal would succeed before another court, and in this case, the Labour Appeal Court. The test, including that of reasonable prospects was explained in *S v Smith*¹ as follows:

¹ 2012 (1) SACR 567 (SCA) (15 March 2011) at para 7

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of succeed on appeal and that those prospects are not remote but have realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success an appeal'.

[7] I have had regard to the submissions made in support of the application for leave to appeal. The applicant essentially rehashes the same issues that were dealt with and disposed of in the judgment, and no purpose will be served in this judgment with a repeat of those issues. I have also had regard to the opposition to the application for leave to appeal and again reflected on my judgment and the reasons for dismissing the applicant's review application. Upon these considerations, coupled with those of the applicable legal principles, I am not convinced that there is a sound and/or rational basis upon which a conclusion can be reached that there are reasonable prospects of success on appeal before the Labour Appeal Court.

[8] Accordingly, the following order is made;

Order:

1. The application for leave to appeal the judgment and order of this court delivered on 3 August 2018 is dismissed.
2. There is no order as to costs.

E Tlhotlhemaje

Judge of the Labour Court of South Africa