



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR1113/14

In the matter between:

VAUGH MORGAN BOLTON

Applicant

And

CCMA

First Respondent

ZAKHELE MHLAMBO

Second Respondent

SHOPRITE CHECKERS (PTY) LTD

Third Respondent

Considered: In chambers

Delivered: 9 November 2018

JUDGMENT – LEAVE TO APPEAL

SEDILE, AJ

- [1] The applicant's review application for an order reviewing and setting aside the award issued by the Commission for Conciliation Mediation and Arbitration was dismissed in a judgment delivered on 24 August 2018. The applicant has

since launched an application for leave to appeal against that judgment and order. The application is opposed by the third respondent. The applicant applied for leave to appeal on 13 September 2018 outside the ten days' time limit applicable in terms of Rule 30 (3A) of the rules of this Court. There was no application for condonation for late filing by the applicant.

- [2] The principles applicable leave to appeal applications are trite. The enquiry is whether there is a reasonable prospect that another court (in this case, the Labour Appeal Court) may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. In explaining what 'reasonable prospects' entail, the Supreme Court of Appeal in *S v Smith*¹ where it was held:

'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'.

- [3] The threshold or test for the granting of leave to appeal is stringent as further demonstrated in *Martin and East (Pty) Ltd v NUM*² where it was emphasised that this Court ought to be cautious when granting leave to appeal, as the statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there are reasonable prospects that the factual matrix could receive different treatment or where there is some legitimate dispute on the law.

¹ 2012 (1) SACR 567 (SCA) (15 March 2011) at para 17.

² (2014) 35 ILJ 2399 (LAC); See also *Seatholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others* (2016) 37 ILJ 1485 (LC).

- [4] I have had regard to the submissions made on behalf of the applicant and in particular, authorities referred therein. I have also had regard to the submissions made in opposing this application. Further having reflected on my judgment, I hold the view that the grounds upon which leave to appeal is sought and the arguments raised in that regard were sufficiently dealt with in the judgment, and it would thus not be necessary to address each and every ground.
- [5] Based on the facts and the law as addressed in the judgment, the grounds upon which leave to appeal is sought and submissions made on behalf of the applicant, I am thus not convinced that there are compelling reasons or sound and/or rational basis for a conclusion to be reached that the applicant has prospects of success on appeal.
- [6] I have further has regard to the requirements of law and fairness in regard to an award of costs, and hold the view that a cost order is warranted in this case.
- [7] Accordingly, the following order is made;

Order

1. The application for leave to appeal is dismissed;
2. The applicant is ordered to pay costs on an attorney and client scale.

P. Sedile

Acting Judge of the Labour Court of South Africa