



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR291/16

In the matter between:

NONHLANHLA HLEZA

APPLICANT

and

**TSOGO SUN CASINO PROPRIETARY
LIMITED t/a MONTECASINO**

RESPONDENT

Decided: In Chambers

Delivered: 7 December 2018

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

SEDILE, AJ

[1] This is an application against the judgment of this Court handed down on 24 August 2018, in terms of which the Court dismissed the applicant's application to review and set aside an arbitration award issued by the Commission for Conciliation, Mediation and Arbitration (CCMA). The application is opposed by the respondent. The applicant filed this application on the 30 October 2018

outside the 10 days' time limit applicable in terms of Rule 30(3A) of the rules of this Court. The delay is almost ten weeks and the applicant had filed an application for condonation for the late filing.

- [2] The principles applicable where leave to appeal is sought 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 (SCA) 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 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.

- [4] I have had regard to the submissions made by the applicant. 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 by 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 had regard to the requirements of law and fairness in regard to an award of costs, and hold the view that cost order is warranted in this case.

[7] Accordingly, the following order is made;

Order

1. Condonation for the late filing of the application for leave to appeal is denied.
2. The application for leave to appeal is dismissed.
3. The applicant is ordered to pay costs.

P.Sedile

Acting Judge of the Labour Court of South Africa

-
1. 2012 (1) SACR 567 (SCA) (15 March 2011) at para 17
 2. (2014) 35 ILJ 2399 (LAC); See also *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others* (2016) 37 ILJ 1485 (LC)

LABOUR COURT