

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR2049/2015

In the matter between:

NTOMBIZODWA PORTIA JIJANA

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

First Respondent

AND ARBITRATION

COMMISSIONER WILLEM KOEKEMOER

Second Respondent

TELKOM SA SOC LTD

Third Respondent

Decided in Chambers

Delivered: 18 December 2018

JUDGMENT – LEAVE TO APPEAL

TLHOTLHALEMAJE, J:

- [1] The applicant's application to review and set aside the arbitration award issued by the second respondent was dismissed in terms of a judgment and order delivered on 28 August 2018. An application for leave to appeal followed on 18 September 2018. That application is opposed by the third respondent.
- [2] In her submissions, the applicant's contention is that the judgment is appealable on a variety of grounds including that the Court erred or misdirected itself on various fronts. I do not deem it necessary to burden this judgment with a repeat of the full submissions made by the parties in respect of this application.

- [3] The test applicable in applications for leave to appeal is trite. It is whether there is a reasonable prospect that another court (in this case, the Labour Appeal Court), presented with the same facts, may come to a different conclusion.
- [4] The provisions of Section 17 of the Superior Court Act Act 10 of 2013, which has equal application in this Court, regulates instances in which the appeal may be granted¹. Equally, the Labour Appeal Court has cautioned this Court in *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*² that a balance between expeditious resolution of a dispute and the rights of the party which has lost ought to be balanced is needed, as is an assessment of whether 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 raised in the leave to appeal³.
- [5] In a nutshell, an application for leave to appeal ought not be easily granted. This approach has been reinforced by the interpretation of section 17(1) of the Superior Courts Act⁴, which as correctly pointed out on behalf of the third respondent, raises the threshold in granting leave to appeal.
- [6] I have had regard to the submissions made on behalf of the applicant in seeking leave to appeal and the opposition in that regard. I am satisfied that upon a reflection of my judgment, the issues raised in the submissions mainly pertain to factual disputes that were adequately dealt with in the judgment, and to which the third respondent had also responded. The application for leave to appeal does not raise any novel issues or any contentious or

¹ Section 17(1) provides:

‘(1) 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
(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.’

² (2014) 35 ILJ 2399 (LAC) at 2405-2406.

³ See also *Kruger v S* 2014 (1) SACR 369 (SCA)

⁴ See *The Mont Chevaux Trust v Tina Goosen and 18 others* 2014 JDR 2325 (LCC) at para 6; *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others* JR1170 /2013 unreported; *Nannen and Others vs Momentum and Others* (6796/05, 2275/05) (2017) ZAGPPHC 433 (14 June 2017)

legitimate points of law which might deserve the attention of the Labour Appeal Court.

[7] In the light of the above, I am not satisfied that there are reasonable prospects that the factual matrix in this matter could receive any different treatment from the Labour Appeal Court, and it follows that the application should fail.

[8] Accordingly, the following order is made;

Order:

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

E Tlhotlhemaje

Judge of the Labour Court of South Africa