THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: J 3521/2018

In the matter between:

NKULULEKO POYA	**Applicant**
and	
RAILWAY SAFETY REGULATOR	**First Respondent**
DR ZETHU QUNTA N.O	**Second Respondent**
BOARD OF RAILWAY SAFETY REGULATOR	**Third Respondent**
MINISTER OF TRANSPORT	**Fourth Respondent**

Decided: **In Chambers**

Delivered: **22 February 2019**

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, J

Introduction

[1] The Applicant approached this Court on an urgent basis, seeking an order to declare disciplinary proceedings invalid and interdicting the Respondents from proceeding with a disciplinary enquiry against him. In a judgment handed down on 6 November 2018, I dismissed the Applicant's application with costs. It is against the whole of the judgment and orders of this Court that the Applicant seeks leave to appeal.

[2] The application was filed some two days' late and the Applicant has sought condonation for such late filing. The delay is not inordinate and I am satisfied with explanation tendered by the Applicant and therefore I grant condonation. I turn now to decide the application for leave to appeal.

[3] The application is opposed by the First, Third and Fourth Respondents and they have filed submissions in respect of their opposition. I do not intend to repeat all of the submissions made by the parties, suffice to mention that I have considered them in determining this application and reference to any part, will be made to the extent that it becomes necessary hereunder.

Grounds for appeal

[4] The Applicant raised a number of grounds for leave to appeal. I have had regard to these grounds and from the outset it is clear that there is no merit in them as they are to a large extent, a repetition of the arguments made before this Court at the hearing of the urgent application. The main contention that

the Court erred in concluding that the Board has the power to discipline the Applicant. According to the Applicant, the power to discipline him lies in the exclusive domain of the Minister of Transport. Heavy reliance is placed on the interpretation of the provisions of the National Railway Regulator Act[1] (RSR Act), particularly section (4) thereof. This ground of appeal is misplaced: This Court was not required to interpret the provisions of the RSR Act, as is clear from paragraph 26 of my judgment.

The test for leave to appeal

[5] The test to be applied in terms of s 17(1) of the Superior Courts Act[2] is whether the applicant would have reasonable prospects of success or whether there is some other compelling reason why an appeal should be heard. There is a litany of judgments which states that there is no automatic right of appeal against a judgment of the Labour Court. This much is also clear from section 166(1) of the Labour Relations Act[3] (LRA) which provides that any party to any proceedings before the Labour Court may apply to the Labour Court for leave to appeal against any final judgment or final order of the Labour Court. In order to be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that the appeal will succeed[4]. The test is not whether or not there is a possibility that another court could come to a different conclusion, the test is whether or not there is a reasonable prospect that another court could come to a different conclusion.

[6] In *S v Smith*[5] the Court held as follows:

[1] Act 16 of 2002.
[2] Act 10 of 2013.
[3] Act 66 of 1995 as amended.
[4] See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).
[5] 2012 (1) SACR 567 (SCA) 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 success on appeal and that those prospects are not remote but have a 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 on appeal'.

[7] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others,*[6] the Labour Appeal Court (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. The Court held:

> '…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.

[8] I am not persuaded that the Applicant has made out a case for the granting of leave to appeal. I am further not persuaded that there are reasonable prospects that the LAC will arrive at a conclusion different from that arrived at by this Court. It follows then that this application must fail.

[9] In the premises, I make the following order:

[6] (2014) 35 ILJ 2399 (LAC).

Order

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

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Connie Prinsloo

Judge of the Labour Court of South Africa