

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2601/18

In the matter between:

FIKILE WALTER QONGWANA

Applicant

and

ARCELOR MITTAL

Respondent

Heard: 03 March 2019

Delivered: 03 March 2019

Edited: In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 20 June 2022

LEAVE TO APPEAL- JUDGMENT

CELE, J

Introduction

[1] This is an application in terms of section 166(1) of the Labour Relations Act (LRA), read with section 17(6) of the Superior Courts Act ,where the applicant seeks leave to appeal against an *ex-tempore* judgment of this Court, issued on 03 March 2019, in this matter. An arbitration award in this matter was successfully reviewed, set aside and substituted at the instance of the applicant, who opposes this application. The appellation of the parties as they were in the review application shall

be retained. The application for leave to appeal was filed late and condonation application was not sought.

[2] To succeed in an application for leave to appeal, an applicant has to satisfy me that the appeal has reasonable prospects of success or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. The threshold to grant leave to appeal has been raised higher. The onus rests with the applicant to demonstrate the presence of any of these identified circumstances.

[3] The applicant failed to file his written submissions as prescribed by Rule 30(3A) read with clause s 15.2 of the Labour Court Practice Manual (Practice Manual). Nonetheless, to the extent that there are some scanty contentions contained in the notice for leave to appeal, I have dealt with the merits of this application.

[4] The threshold for granting leave to appeal in terms of section 17(1)(a)(i) of the Supreme Courts Act¹ (SCA) is high. To succeed, a party seeking leave to appeal must show that the appeal 'would' have reasonable prospects of success. Put otherwise, it must be show that another court 'will', not 'might', differ from the court whose judgment is sought to be appealed against.² When it comes to labour matters, another pivotal consideration is the imperative that labour disputes must be expeditiously resolved.³

[5] Having holistically assessed all the grounds of appeal, I am convinced that there are no prospects that another court would reasonably arrive at a decision different to the one reached by this Court. Even though this application is undoubtedly unmeritorious, I am disinclined to award costs against Mr Qongwana, an individual litigant.

¹ Act 10 of 2013.

² See *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H; *Acting National Director of Public Prosecutions & Others v Democratic Alliance in re: Democratic Alliance v Acting National Director of Public Prosecutions & others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016) at para 25.

³ See: *Martin and East (Pty) Limited v National Union Mineworkers and Others* (2014) 35 ILJ 2399 (LAC).

[6]

Order:

1. The leave to appeal is accordingly dismissed.
2. There is no order as to costs.

H. Cele

Judge of the Labour Court of South Africa