

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J203/16

In the matter between:

DENNIS BALOI

First Applicant

CASWELL MOZAMANE BALOI

Second Applicant

and

MADDOX ADAMS INTERNATIONAL

SOUTH AFRICA (PTY) LIMITED

Respondent

Decided: In chambers

Delivered: 18 April 2019

JUDGEMENT: APPLICATION FOR LEAVE TO APPEAL

NKUTHA-NKONTWANA. J

Introduction

- [1] This is an application for leave to appeal brought by the applicants against the whole judgment and order of this Court handed down on 15 August 2018. The application is opposed by the respondent. In the impugned judgment I dismissed the applicants' application for declaratory order in terms of section 197 and 197A of the Labour Relations Act¹ (LRA) with no order as to costs.

Grounds of the leave to appeal.

- [2] The application for leave to appeal is hinged on, *inter alia*, the following grounds:

- 2.1. The Court disregarded the respondent's concession that it effectively took over the business of the applicant's erstwhile employer, Rofo Equipment CC (Rofo Equipments), which was sequestered in June 2001.
- 2.2. The Court incorrectly found that there were no contracts of employment at the time when Rofo Equipments was sequestered.
- 2.3 The Court erred in its finding that prescription was applicable.

The test for leave to appeal

- [3] It is trite that in an application for leave to appeal, the applicants must convince the court *a quo* that they have a reasonable prospect of success on appeal. In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*² this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

"The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word "would" in s17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court

¹ Act 66 of 1995 as amended.

² (2016) 37 ILJ 1485 (LC) at para 3.

might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015)).

[4] Turning to the present matter, I do not intend to regurgitate the findings in the main judgment as they are explicit. Having considered the various grounds of appeal as well as the written submissions filed by both parties in support of their respective cases, I am convinced that the applicants have not demonstrated that ‘there is a reasonable prospect that the factual matrix could receive a different treatment or that there is some legitimate dispute on the law’ as envisaged by section 17(1)(a) of the Superior Courts Act.³ The application for leave to appeal should therefore be refused.

[5] On the issue of costs; it is trite that in this Court costs do not follow the result. In this instance, I deem it inappropriate to burden the applicants who are individual litigants with costs.

[6] In the circumstances, I make the following order:

Order

1. The application for leave to appeal is dismissed with no order as to costs.

P. Nkutha-Nkontwana

³ Act 10 of 2013.

Judge of the Labour Court of South Africa

LABOUR COURT