THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 2797/17

BONGA BALDWIN MAJOLA **Applicant**

and

MEC FOR ROADS AND TRANSPORT: GAUTENG PROVINCIAL DEPARTMENT: MR ISMAIL VADI N.O **Respondent**

Decided: **In Chambers**

Delivered: **30 April 2019**

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, J

Introduction

[1] On 16 January 2019, this Court handed down judgment in terms of which the Applicant's case was dismissed with no order as to costs. The Applicant subsequently filed an application for leave to appeal against the whole of the judgment and order of this Court.

[2] The Applicant also filed an application for condonation for the late filing of his submissions made in terms of Rule 30(3A) of the Labour Court Rules. I have

considered the application for condonation and as the delay is minimal and the explanation tendered acceptable, I am inclined to grant condonation for the late filing of the Applicant's submissions.

[3] The application for leave to appeal is opposed.

[4] Both parties have filed submissions in respect of the leave to appeal. I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

The test for leave to appeal

[5] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act[1] (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) 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 another court could come to a different conclusion[2]. 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] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law. In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[3] 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

[1] Act 66 of 1995 as amended.
[2] See: *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).
[3] (2016) 37 ILJ 1485 (LC).

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 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).'

[7] In deciding this application for leave to appeal I am also guided by the *dicta* of the Supreme Court of Appeal where it was held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*[4] that:

> 'The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.'

Grounds for leave to appeal

[8] The Applicant has raised a number of grounds for leave to appeal. I have read and considered those and in my view, there is no merit in any of the grounds. I do not intend to repeat or address all the grounds for appeal raised by the Applicant but to illustrate that the application for leave to appeal is without merit, I will deal with one of the grounds for leave to appeal in detail.

[4] 2013 (6) SA 520 (SCA); [2014] 1 All SA 375 (SCA) at para 24.

[9] I found *inter alia,* that section 17 of the Public Service Act[5] (PSA) empowers the Respondent to dismiss an employee on account of incapacity, operational requirements or misconduct wherefore a decision to dismiss an employee on any of the aforesaid grounds cannot be invalid or unlawful, as it is authorised by law. The power to dismiss, should however be exercised in accordance with the provisions of the Labour Relations Act[6] (LRA). I found that the Applicant's remedy was in the LRA.

[10] The Applicant's ground for leave to appeal is *inter alia,* that this Court erred in finding that the Respondent's decision to dismiss him was not unlawful and further erred in finding that his remedy is to be found in the LRA.

[11] In opposition, the Respondent submitted that the decision of this Court and reasons as set out in the judgment, accord with other decisions where public sector employees seek to challenge their dismissal in the Labour Court. This is no more than an unfair dismissal dispute and the Applicant's remedy is indeed in the LRA.

[12] I reiterate what I have already alluded to in the judgment, with specific reference to *Steenkamp and Others v Edcon Limited* [7] where it was held that:

> 'The LRA created special rights and obligations that did not exist at common law. One right is every employee's right not to be unfairly dismissed which is provided for in s 185. The LRA also created principles applicable to such rights, special processes and fora for the enforcement of those rights. The requirement for the referral of dismissal disputes to conciliation is one of the processes created by the LRA. The CCMA, bargaining councils and the Labour Court are some of the fora. The principles, processes, procedures and fora were specially created for the enforcement of the special rights and obligations created in the LRA. Indeed, the LRA even provides for special remedies for the enforcement of those rights and obligations. The special remedies include interdicts, reinstatement and the award of compensation in appropriate cases. These special rights, obligations, principles, processes, procedures, fora and remedies constitute a special LRA dispensation.'

[5] Act 103 of 1994, as amended.
[6] Act 66 of 1995 as amended.
[7] (2016) 37 ILJ 564 (CC) para 105.

[12] In respect of 'unlawfulness', the Constitutional Court held that there is no provision in the LRA for a right not to be dismissed unlawfully and no provision is made for any dispute procedures or processes for the enforcement of such a right.

[13] I have dealt fully in detail with the relevant issues in my judgment and there is no need to repeat what is stated therein for purposes of this judgment. Grounds for leave to appeal and submissions are meant to persuade me that there are reasonable prospects that another court would arrive at a different decision. *In casu,* I am not persuaded that there is a case made out for leave to appeal to be granted and the LAC should not be burdened with an appeal that lacks merit.

[14] In applying the relevant principles, the grounds for leave to appeal as submitted by the Applicant fall hopelessly short off the mark of reasonable prospects of success. I am also not convinced that any novel issues were raised that deserve the attention of the LAC.

[16] In the result I make the following order:

Order

1. The late filing of the Applicant's submissions in terms of Rule 30(3A) of the Rules of the Labour Court is condoned;
2. The application for leave to appeal is dismissed;
3. There is no order as to costs.

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Connie Prinsloo

Judge of the Labour Court of South Africa