IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 175/17 & JR 200/17

In the matter between:

SOUTH AFRICAN POLICE SERVICE **Applicant**

and

SOLIDARITY OBO CONRADIE AND 180 OTHERS **First Respondent**

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION **Second Respondent**

L DU PLESSIS *N.O* **Third Respondent**

Decided: In Chambers

Delivered: 28 June 2019

JUDGMENT- APPLICATION FOR LEAVE TO APPEAL

MAHOSI. J

[1] This is an opposed application for leave to appeal against the whole judgment of this Court handed down on 15 March 2019 in terms of which the Court dismissed the review application.

[2] The applicant brought this application on the grounds that the Court erred in law by:

2.1 Holding that "*the date of dispute or alleged act or omission of discrimination should be taken as the date upon which the grievance remained unresolved and the certificate issued*."

2.2 Holding that if internal grievance processes are not exhausted *"this would mean that an employee would be required to refer a dispute within 6 months even though such employee would not have exhausted the internal dispute resolution process."*

2.3 Holding that any contrary interpretation of section 10 (2) read with sections 10 (3) and 10 (4) of the Employment Equity Act[1] (EEA) "*could not be supportive of the spirit, purport and objects of the Constitution of the Republic of South Africa*."

2.4 Holding that when regard is had to "*the objective facts before the commissioner and the applicable law, jurisdictional facts necessary for the CCMA to be vested with relevant jurisdiction existed*."

2.5 Incorrectly interpreting section 10 of the EEA.

2.6 Failing to apply the test laid down in the judgment of *SABC v CCMA*[2] to the facts in this matter.

[3] In opposing this application, the first respondent submitted that the interpretation afforded to section 10 of the EEA by the applicant not only limits the rights of employees, but amounts to a restrictive interpretation, which does not support the spirit, purport and objects of the Constitution of the Republic of South Africa, nor the purpose of the EEA.

[4] The first respondent submitted that the applicant failed to explain the basis on which the relevant employees would be entitled to simply ignore the internal

[1] Act 55 of 1998.
[2] [2010] 3 BLLR 251 (LAC).

processes given that the grievance procedure is embodied in a collective agreement.

[5] In determining whether to grant an application for leave to appeal, the traditional test is whether there is a reasonable prospect that another court may come to a different conclusion.[3] In terms of section 166(1) of the Labour Relations Act (LRA),[4] a party to proceedings before the Labour Court, may apply to the Labour Court for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. Section 17 of the Superior Court Act,[5] which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

> 'Leave to appeal may only be given where the judge or judges are of the opinion that–
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> (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.'

[6] Section 16(2)(a) of the Superior Court Act provides as follows:

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[3] See *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC) at 2890B; *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC) at 1443 para 2 and *Tsotetsi v Stallion Security (Pty) Ltd* (2009) 30 ILJ 2802 (LC) at 2804 para 14.
[4] Act 66 of 1995 as amended.
[5] Act 10 of 2013.

'(i) When at the hearing of the appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.

(ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

[7] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others,*[6] the 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. In this case, the Court stated as follows:

> '…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.
>
> There are two sets of interests to consider. There are the interests of the parties such as appellant, namely who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to a different conclusion. There are also the rights of employees who land up in a legal "no-man's-land" and have to wait years for an appeal (or two) to be prosecuted.
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> This was a case which should have ended in the labour court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court *a quo* misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.
>
> I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If 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 different. But

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

> this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.'[7]

[8] Having had regard to the applicant's submissions, the Court is not persuaded that there are reasonable prospects that the LAC could come to a different conclusion. With regard to costs, I am of the view that the requirements of law and fairness dictate that there should be no order as to costs.

[9] Accordingly, the following order is made:

Order

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

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D. Mahosi

Judge of the Labour Court of South Africa

[7] At 2405-2406.