

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 479/18

In the matter between

MALULEKE K L**Applicant**

and

DEPARTMENT OF TELECOMMUNICATIONS**First Respondent****AND POSTAL SERVICES****T N DUBE****Second Respondent****GENERAL PUBLIC SERVICE****BARGAINING COUNCIL****Third Respondent****Date heard:****In chambers:****Date delivered:** 31 January 2020**Summary:** Application for leave to appeal

JUDGMENT – LEAVE TO APPEAL

COETZEE AJ

[1] In the written judgment of 7 November 2019 I dismissed the applicant's review application with no order as to costs.

- [2] The applicant on 25 November 2019 filed an application for leave to appeal.
- [3] The application for leave to appeal sets out the various grounds of appeal.
- [4] The application for leave to appeal is opposed.
- [5] I have considered the application for leave to appeal and the written representations in chambers.
- [6] In terms of Rule 30 (2)

'If leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period'

- [7] The application was made timeously.
- [8] Section 17 of the Superior Courts Act, no 10 of 2013 regulates an application for leave to appeal from a decision of a High Court. It reads as follows:

'17. Leave to appeal. —

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

- (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 decision 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 issues between the parties'.

[9] This section also applies to applications for leave to appeal in the Labour Court.¹

[10] The Court in *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others*² conveniently summarised the approach to an application for leave to appeal:

'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 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) and also *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others*³.'

¹ Section 151 of the Labour Relations Act, Act 66 of 1995

² JR1170 /2013 unreported

³ (2016) 37 ILJ 1485 (LC)

[11] I do not intend to deal with each of the grounds of appeal separately.

[12] The applicant has raised one ground of appeal that is different from the grounds of review in the hearing of the matter which grounds were addressed in the reasons for the judgment.

[13] The new ground is based upon the following remark in paragraph 5 of the judgment:

"The registrar enrolled this matter on the special roll because of the voluminous documentation. I have made ample use of the heads of argument and borrowed generously therefrom".

[14] The applicant submits that a use of the heads (that included those of the applicant) is indicative thereof that the judge failed to apply his mind to the issues and failed to exercise an independent judgment in the matter which deprived the applicant of a fair trial.

[15] A careful reading of the judgment will show that it is not the case. A *verbatim* repeat of portions of the heads (of both parties) are only in respect of quotations from the record and documentary evidence.

[16] In all instances, reasons were given for findings. For example, the applicant submits that the arbitrator found that the 2012 HR Policy did not have retrospective effect but applicant was charged on same and the judgment does not address this finding. The judgment in fact sets out that the 2012 policy was in effect the 2009 policy that had not been withdrawn. In effect this means that she was in breach of an existing rule. Thus the ground of appeal has no merit.

[17] The rest of the grounds of appeal are in substance a repeat of the grounds of review raised in the hearing and dealt with in the judgment.

[18] In my view after careful consideration of the applicant's stated grounds for leave to appeal, there is nothing that persuades me that any appeal would have a reasonable prospect of success.

[19] There are no other compelling reasons why leave to appeal should be granted.

[20] There is no reason why a cost order should be made in this application.

[21] I make the following order:

[21.1] The application for leave to appeal is dismissed.

[21.2] There is no order as to costs.

Coetzee AJ

Acting judge of the Labour Court

Representation:

For the applicant: Considered in chambers

For the Respondent: Considered in chambers