



**THE LABOUR COURT OF SOUTH AFRICA
JOHANNESBURG**

Not reportable

Case no: J 1429/19

MOEKETSI MOSOLA

First Applicant

**THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Second Applicant

**DIALE MOGASHOA ATTORNEYS
and**

Third Applicant

NOTOBEKO MEMELA

Respondent

Decided: In Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 07 May 2020

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, J

- [1] The Applicants applied for leave to appeal against the judgment delivered on 29 November 2019 and the order as to costs delivered on 18 December 2019.

I will deal with the two judgments and the application for leave to appeal in respect of each in turn.

- [2] The Applicants also filed an application for condonation for the late filing of the written submissions filed in terms of Rule 30(3A) of the Labour Court Rules.
- [3] The Respondent filed submissions in opposition to the application for leave to appeal on 16 March 2020.
- [4] The handing down of this judgment has unfortunately been delayed by the national lock down due to Covid-19

The judgment of 29 November 2019

- [5] On 29 November 2019 this Court delivered a judgment wherein *inter alia* Mr Ntsimane was found guilty of being in contempt of a Court order dated 20 June 2019 by suspending the Respondent and by keeping her suspended.
- [6] On 10 January 2020 the Applicants filed an application for leave to appeal against the whole of the judgment and orders of the judgment delivered on 29 November 2019.
- [7] Rule 30(2) of the Labour Court Rules provides that an application for leave to appeal is to be made within 15 days of the date of the judgment against which leave to appeal is sought. *In casu* the judgment was handed down on 29 November 2019 and the prescribed 15 days to file an application for leave to appeal expired on 20 December 2019.
- [8] The Applicants only filed an application for leave to appeal against the judgment delivered on 29 November 2019 on 10 January 2020, evidently outside the prescribed period of 15 days.
- [9] Rule 12 provides that this Court may, on good cause shown, condone the non-compliance with any prescribed period. Where a party failed to comply with a prescribed time period, such party may apply on notice for an order to condone non-compliance and such an application has to be brought in terms

of the provisions of Rule 7. In compliance with Rule 7, there has to be a notice of motion setting out the relief sought and the application must be supported by affidavit, setting out the material facts on which the application is based. Rule 30(2) also provides for an extension of the 15-day period, on good cause shown.

- [10] It is trite that an application for condonation must be brought as soon as it is necessary to bring such application, and this fact had to be known to the Applicants on 10 January 2020, when the application for leave to appeal was filed outside the prescribed period.
- [11] However, the Applicants failed to file an application for condonation, setting out the material facts and providing an explanation to this Court as to why the application for leave to appeal was filed late.
- [12] Instead the Applicants filed an application for condonation for the late filing of their submissions in the application for leave to appeal. In my view the application for condonation for the late filing of submissions in respect of the judgment handed down on 29 November 2019 is irrelevant as the application for leave to appeal was late and no condonation is sought for the late filing of the application for leave to appeal. This Court cannot condone the late filing of submissions in respect of an application for leave to appeal that was filed late and for which no condonation is sought.
- [13] The failure to comply with the prescribed period goes to the issue of jurisdiction. In *SA Transport and Allied Workers Union v Tokiso Dispute Settlement and others*¹ the Labour Appeal Court (LAC) confirmed that where a party is out of time and has to take the jurisdictional step to apply for condonation but failed to do so, a court cannot come to that party's assistance. The LAC held that in the absence of an application for condonation, the Court cannot assist the party.
- [14] The same principle applies *in casu* where the reality is that the Applicants had to apply for condonation for their failure to comply with a prescribed period to file an application for leave to appeal, but failed to do that. It follows that

¹ (2015) 36 ILJ 1841 (LAC).

absent an application for condonation this Court has no jurisdiction and cannot come to the Applicants' assistance.

- [15] In summary: The Rules of this Court require that an application for leave to appeal must be made within 15 days of the date of the judgment against which leave to appeal is sought, except that the Court may, on good cause shown, extend that period. The present application should have been filed by 20 December 2019 and as it was not accompanied by an application seeking condonation for the Applicants' failure to file the application within the prescribed time limit, this Court has no jurisdiction to consider the application.

The judgment of 18 December 2019

- [16] On 18 December 2019, this Court ordered Diale Mogashoa Attorneys to pay the Respondent's costs in the contempt of Court application *de bonis propriis* on a scale as between attorney and client.
- [17] On 10 January 2020, the Applicants filed an application for leave to appeal against order as to costs delivered on 18 December 2019. The application for leave to appeal in respect of the order of 18 December 2019 has been filed in time and will be considered. I am also inclined to grant condonation for the late filing of submissions in respect of the application for leave to appeal against the order of 18 December 2019.
- [18] It is trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. 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.
- [19] 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:

² (2016) 37 ILJ 1485 (LC) at para 3.

“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)”.

[20] It is within this context that I have to consider the application for leave to appeal against the order of 18 December 2019.

[21] I have perused the application for leave to appeal and the grounds for appeal raised therein. Apart from the first paragraph in the application for leave to appeal which states that the Applicants are applying for leave to appeal against the cost order, there is not a single ground for appeal against the cost order of 18 December 2019 raised in the application.

[22] I have further perused the submissions filed by the Applicants in support of the application for leave to appeal. Not a single submission is made in support of the Applicants’ appeal against the cost order.

[23] The Applicants must convince this Court that they have reasonable prospects of success on appeal in respect of the cost order that this Court granted. They have dismally failed to do so. Not a single submission had been made to attack this Court’s order on costs and not even a remote case had been made

out to support an application to appeal such an order. Absent any ground for appeal or any submission to support that, this Court cannot and should not grant leave to appeal.

[24] There is simply no merit in the application for leave to appeal against the order of 18 December 2019.

[25] In the premises, I make the following order:

Order

1. The application for leave to appeal is dismissed with costs.

Connie Prinsloo

Judge of the Labour Court of South Africa