



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 281/19

In the matter between:

JOHN SELLO MABOKELA

Applicant

and

RAILWAY SAFETY REGULATOR

Respondent

Decided: In Chambers

Delivered: 2 July 2020

In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 02 July 2020.

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, J.

Introduction

- [1] Having granted an order dismissing the review application filed by the respondent and having provided reasons for my order on 15 February 2020, the Respondent filed this application, seeking leave to appeal against the judgment of this Court.

[2] It is apposite at this point to set out a brief background of this matter.

Background

[3] The Applicant referred an unfair labour practice dispute against the Respondent, which was arbitrated and an arbitration award was issued on 9 December 2018. Subsequent thereto, the Respondent filed an application to review and set aside the arbitration award. The review application was filed outside the prescribed six-week period and the Respondent did not seek condonation for the late filing of the review application.

[4] On 19 September 2019, the Applicant filed an application in terms of the provisions of Rule 11 of the Labour Court Rules where he sought an order to dismiss the Respondent's application for review. The Applicant had submitted that not only was the review application filed late, but the Respondent had also failed to file the record within the prescribed 60-day period.

Grounds for leave to appeal

[5] The crux of the Respondent's challenge to the judgment of this Court is that the Court erred in dismissing the review applicant after finding that it was deemed withdrawn in terms of the provisions of clause 11.2.3 of the Practice Manual of this Court¹. The Respondent submitted that leave to appeal should be granted on the following grounds:

5.1 The status of a review application that is deemed to be withdrawn is critical to the issue of jurisdiction and whether there is, in fact and in law, a matter before the Court that is capable of being adjudicated;

5.2 There are conflicting judgments coming out of this Court regarding the interpretation of clause 11.2.3 of the Practice Manual, resulting in confusion and uncertainty in the practice and procedure in the Labour Court.

5.3 The clarification of this issue is of practical importance to the Labour Court as it will have a direct impact on the court roll.

[6] It is apposite at this juncture to state that on a complete reading of the

¹ April 2013.

Respondent's submissions, its challenge is limited to the Court's finding that the review application is deemed withdrawn, as envisaged in clause 11.2.3 of the Practice Manual, and the subsequent dismissal of its application. The Respondent had lost sight of the findings of this Court *in toto*. Had the Respondent had a total regard of the judgment, it would have acquiesced with the fact that this was not an isolated factor taken into account by the Court and it was not the sole basis for dismissing the review application. The following passages from the judgment need to be repeated:

[20] *In casu*, it is undisputed that the Respondent has not filed the record within the prescribed 60-day period. The Respondent has not followed any of the steps to ensure an extension of time to file the record after the record was uplifted in March 2019. It follows that the review application is deemed to be withdrawn.

...

[22] Secondly, the application for review was dismissed because it was filed out of time without any application for condonation.

...

[26] The failure to comply with the prescribed period goes to the issue of jurisdiction. The late filing of the review application constitutes a failure to comply with a statutory provision and the Respondent had to apply for condonation.

[27] *In casu*, there is no application for condonation. The late filing of the review application as well as the absence of an application for condonation is fatal to the Respondent's case, more so where there was no attempt to comply with the Rules in filing the record and to apply for condonation.

Test for leave to appeal

[7] The test for leave to appeal is trite. The longstanding requirement is 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.

[8] 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.

- [9] 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 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)’.

- [10] In deciding this application for leave to appeal, I am also guided by the dicta of the Supreme Court of Appeal (SCA) where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*³ 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.’

- [11] A consideration of the above principles evinces that the Respondent’s understanding of the applicable principles is flawed. The requirements for seeking leave to appeal are clear and simple. The Respondent wants to nitpick findings of the Court and run with one it considers confusing and hope

² (2016) 37 ILJ 1485 (LC) at para 3.

³ 2013 (6) SA 520 (SCA); [2014] 1 All SA 375 (SCA) at para 24.

that that would suffice to be granted leave to appeal to a higher Court. This approach is ill conceived and this Court is not convinced that this point, even when considered uniquely confusing by the Respondent deserves the attention of the Labour Appeal Court (LAC). It is on this basis that the application falls to be dismissed.

[12] Even if this Court is wrong in its finding in respect of the interpretation of clause 11.2.2, the late filing of the review application without seeking condonation for such late filing is fatal to the Respondent's case. That also constituted a basis to dismiss the Respondent's review application and no leave to appeal is sought against that.

[13] In *Computer Storage Services Africa (Pty) Ltd v CCMA and Others*⁴ the LAC recently confirmed that where no application served before the Labour Court seeking condonation to be granted for the late filing of the application for review, the Labour Court correctly found that it lacked jurisdiction to determine that review application.

[14] Having considered the grounds for leave to appeal as submitted by the Respondent, I am not persuaded that there are reasonable prospects that the LAC could arrive at a different conclusion than that of this Court. It follows that the application for leave to appeal has to fail.

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

Order

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

Connie Prinsloo

Judge of the Labour Court of South Africa

⁴ Unreported judgment of the Labour Appeal Court (CA 7 /2016) handed down on 30 November 2017

LABOUR COURT