



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No. JR1803/20

In the matter between:

KWENA MAHLAKOANA

Applicant

and

COMMISSION: CONCILIATION MEDIATION & ARBITRATION First Respondent

COMMISSIONER NGOBENI N.O
Respondent

Second

COMPETITION COMMISSION OF SOUTH AFRICA

Third Respondent

Decided: In Chambers

Delivered: 21 January 2025

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

GOVENDER, AJ

Introduction

[1] The Applicant has applied for leave to appeal on 7 October 2024 concerning this Court's judgment of 13 September 2024. The application for leave to appeal was brought within the 15 day period as contemplated by Rule 67(2)¹.

[2] The Applicant claims that the leave to appeal should be granted because:

2.1 The Court misdirected its inquiry on the assessment of affidavits in motion proceedings for final relief;

2.2 The Court incorrectly applied the law upon the incorrect facts and on correct facts;

2.3 The Applicant is of the view that the Court erred in dismissing the review application on the narrow basis that the common cause facts exhibited an offer of employment which the Applicant did not accept and on the application of the *ratio* in *Member of the Executive Council, Department of Health, Eastern Cape v Odendaal and others*², that an employment relationship did not arise beyond 31 December 2019;

2.4 Ultimately, the Applicant claims that the Court erred by not recognising the automatic renewal of contracts upon the expiry date of contracts on 31 December 2019.

[3] Now that the grounds upon which leave to appeal has been sought have been distilled, I now turn to address the test on leave to appeal.

Test on leave to appeal

[4] Section 17 of the Superior Courts Act³ regulates when leave to appeal may be granted. Section 17(1) provides as follows:

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

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

² (2009) 30 ILJ 2093 (LC); [2009] 5 BLLR 470 (LC).

³ Act 10 of 2013.

- (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.'

[5] When deciding whether to grant leave to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another Court *would* come to a different conclusion than that of the Court *a quo*, or in other words, whether the appeal would have a reasonable prospect of success⁴.

[6] In *South African Clothing and Textile Workers' Union and Others v Stephed Military Headwear CC*,⁵ the Court held as follows:

'It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal...'

[7] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*,⁶ the Court applied the concept of "reasonable prospects of success" as follows:

'[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013

⁴ See Section 17(1)(a) of the Superior Courts Act; *Molefe v MMARAWU and Others* [2017] ZALCJHB 337; *Mbawuli v Commission for Conciliation, Mediation and Arbitration and Others* [2017] ZALCJHB 275; *Glencore Operations South Africa (Pty) Ltd v NUM obo Maripane and Others* [2017] ZALCJHB 147.

⁵ [2017] JOL 37932 (LC); [2017] ZALCJHB 184 at para 7. See also *Seathlolo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others* (2016) 37 ILJ 1485 (LC); [2016] ZALCJHB 72 at para 3.

⁶ [2016] JOL 36940 (SCA); [2016] ZASCA 176 at paras 16 – 17.

makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’ (Emphasis added)

Analysis

[8] I have considered the grounds upon which leave to appeal has been sought as well as the submissions in support of leave to appeal being granted and the submissions opposing leave to appeal being granted.

[9] The alleged factual errors are not factual errors and it is clear that the Court carefully analysed the issue of the “*automatic renewal of the contract*”, and in particular the concession by the Applicant that the contract was not automatically renewed because the duration of the contract was at issue. This is dealt with in paragraphs 39 and 40 of my judgment.

[10] The Applicant’s version vacillated and he ultimately acknowledged that he was offered an employment contract and he was signing the contract in order for it to be renewed.

[11] The grounds of review can at best be described as the Applicant disagreeing with the Court’s findings, but it certainly does not meet the threshold of having reasonable prospects of success or that another Court would come to a different conclusion, as the Applicant contends.

[12] The ground of review that the Court misdirected its inquiry on the assessment of affidavits in motion proceedings for final relief appears to be a sweeping statement and there is nothing to support this averment.

[13] When considering the totality of evidence and the judgment, there is no basis for this Court to conclude that another Court *would* reach a different conclusion.

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

Order

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

T. Govender

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Molaba Attorneys

For the Third Respondent:

A M Vilakazi Tau Inc