



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR2106/21

In the matter between:

HAMILTON NGUBO

Applicant

and

SOUTH AFRICAN BROADCASTING CORPORATION **First Respondent**

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION** **Second Respondent**

DAN PRETORIUS N.O. **Third Respondent**

Decided in chambers: 20 January 2025

This judgment was handed down electronically by emailing a copy to the parties. The 20th of January 2025 is deemed to be the date of delivery of this judgment.

JUDGMENT: LEAVE TO APPEAL

MEYEROWITZ AJ

[1] This is an opposed application for leave to appeal, brought by the applicant (Mr Ngubo), against my judgment in this matter dated 18 September 2024.

[2] The facts and my reasoning in this matter are recorded in the above judgment and need not be repeated here. Mr Ngubo's written submissions in support of his application for leave to appeal have not persuaded me that any material findings I made were incorrect, or that an appeal would have reasonable prospects of success.

[3] After considering all of the evidence, I was satisfied that Mr Ngubo had been dishonest with the investigators by not disclosing his conversation with Mr Hanarkan. I was not satisfied beyond a reasonable doubt but I was satisfied on a balance of probabilities. I only mentioned the criminal burden to emphasise that Mr Ngubo's version, while plausible, was not the more likely version – I certainly did not shift or elevate the burden of proof.

[4] While I appreciate that not every act of dishonesty justifies dismissal, my view remains that the Commissioner acted reasonably when finding dismissal to have been an appropriate sanction. This is on the basis that dismissal should be a sensible operational response to risk management.

[5] The written submissions in this matter were late but the tardiness is hereby condoned because the delay was brief. However, the failure to apologise or seek condonation is disrespectful of this court and provides sufficient basis to depart from the norm that costs do not follow the result in labour matters.

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

Order

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

Mark Meyerowitz
Acting Judge of the Labour Court of South Africa

LABOUR COURT