



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR1655/22

In the matter between:

NUMSA obo RAMOTHIBE & 55 OTHERS

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

DIALWA ALPHEUS MATHALA N.O.

Second Respondent

UNIVERSAL TISSUE (PTY) LTD

Third Respondent

Delivered: 17 February 2025

JUDGMENT – LEAVE TO APPEAL

DE HAAN, AJ

[1] The applicant applied for leave to appeal against the whole of the judgment and order delivered on 05 August 2024.

[2] I have considered the grounds for appeal raised by the applicant, the submissions made by the applicant in support thereof and the submissions made by the first respondent in opposition, but do not intend to repeat them herein.

Condonation

[3] The applicant seeks condonation for the late filing of its submissions. The respondent does not appear to oppose the granting of condonation. I consider it in the interest of justice that condonation be granted.

The test for leave to appeal

[4] Section 166(1) of the Labour Relations Act¹ (LRA) provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court and section 17(1) of the Superior Courts Act² provides that:

"(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."

¹ Act 66 of 1995, as amended.

² No. 10 of 2013.

[5] An applicant for leave to appeal must convince the court that it has reasonable prospects of success on appeal. As Prinsloo J said in *Mothupi v South African Local Government Bargaining Council and Others (Application for Leave to Appeal)*³:

“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.”

[6] The test applicable in applications for leave to appeal is stringent. In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,⁴ this Court confirmed that 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) is 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

³ (JR2300/22) [2024] ZALCJHB 334 (29 August 2024).

⁴ (2016) 37 ILJ 1485 (LC) at para 3.

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).’

[7] In *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*⁵ the Supreme Court of Appeal (SCA) held 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.’

This application

[8] The applicant premised its application for leave to appeal on the assertion that the judgment is incorrect and/or unjust and that a different court, “*will come to a different conclusion*”.

[9] This matter on the one hand concerns the procedural fairness of a dismissal of a large number of employees who attended their disciplinary hearing, but was excluded from the hearing when the employer and the chairperson decided to proceed at a different location without inviting the employees or their union and without considering alternatives to proceeding in the absence of the employees; and on the other hand the substantive fairness of a dismissal where the only criteria for the employer’s application of the doctrines of team liability, derivative misconduct or common purpose was the admitted participation in a strike, despite the absence of any identified employees who committed the alleged misconduct.

[10] The applicant repeats its insistence that one of the above doctrines of collective liability applies to the dismissed employees. In the judgment I dealt with each of these doctrines and pointed out why the applicant’s reliance on each of them is misplaced. The law is settled and there is no legitimate dispute about the applicable legal principles involved. I also do not consider that there is a reasonable

⁵ 2013 (6) SA 520 (SCA) at para 24.

prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion.

Conclusion

[11] As stated above, I have considered the submissions made by the applicant and the respondent. I am not convinced that the applicant has made out a case that passes the test for leave to appeal and the stringent threshold of a reasonable prospect that another court would come to a different conclusion.

[12] In the premises, the following order is made:

Order

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

L. De Haan

Acting Judge of the Labour Court of South Africa