



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR10/20

In the matter between:

AMCU OBO JOSEPH LETSHESA MANOTO Applicant

and

MATSOPA MINERALS (PTY)LTD First Respondent

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

JOSEPH MZWANDILE DLENGEZELE N.O Third Respondent

Considered : In chambers

Delivered: 20 February 2025 (This judgment was handed down electronically by emailing a copy to the parties. The 20 February 2025 is deemed to be the date of delivery of this judgment).

JUDGMENT – LEAVE TO APPEAL

BALOYI , AJ

Introduction

[1] This is an application for leave to appeal the judgment and order handed down on 18 November 2024.

[2] The Court made the following order:

1. “The arbitration award dated 29 November 2019 issued under case FSWK2952-19 by the second Respondent is reviewed and set aside and replaced with the following order:

“The dismissal of Joseph Letshesa Manoto was substantively fair”

[3] The application is opposed by the first Respondent. I have considered the first Respondent’s application for condonation in relation to the late filing of its submissions. The application is not opposed and a case has been made out for condonation. In the circumstances, condonation is granted.

Test to succeed in an application for leave to appeal

[4] Section 17(1) of the Superior Courts Act¹ states as follows:

‘(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

¹ Act 10 of 2013.

(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] The test to succeed in an application for leave to appeal is now settled. It is a stringent test.² The Applicant must show that another Court would come to a different conclusion on the same facts or there exists some other compelling reasons why the appeal should be heard.

[6] In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*,³ the Supreme Court of Appeal (SCA) stated 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 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 why 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.’

[7] In *Martin and East (Pty) Ltd v National Union of Mineworkers and others*,⁴ the Labour Appeal Court cautioned that this Court must be cautious in granting leave to appeal and should consider the competing interests of the parties in ensuring a balance between the expeditious resolution of a dispute and the rights of the losing party.

² *Minister of Home Affairs v Fireblade Aviation Ltd and Others* [2018] ZASCA 36 (28 March 2018).

³ (1221/2015) [2016] ZASCA 176 (25 November 2016) at paras 16 and 17.

⁴ (2014) 35 ILJ 2399(LAC) at 2405 to 2406.

[8] Having reflected on my judgment, the conclusions reached therein and the submissions made in opposition to the application, I am unpersuaded that any of the submissions made on behalf of the Applicant enable me to form the opinion that an appeal would have a reasonable prospect of success. I am equally not persuaded that the submissions made on behalf of the Applicant raise some or other compelling reason, or novel factual or legal material that deserves the attention of the Labour Appeal Court.

[9] 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.

FI Baloyi

Acting Judge of the Labour Court of South Africa