



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1899/2020

In the matter between:

EMPACT GROUP (PTY) LTD

Applicant

and

NATASHA MONI N.O.

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

ABONGILE MANELI

Third Respondent

Heard: In Chambers

Delivered: 24 February 2024

This judgment was handed down electronically by emailing a copy to the parties. The 24th of February 2025 is deemed to be the date of delivery of this judgment.

JUDGMENT

APPLICATION FOR LEAVE TO APPEAL

ITZKIN, AJ

[1] This is an application for leave to appeal against the whole *ex tempore* judgment and order of this court delivered on 5 November 2024. In the judgment, a review application pertaining to a rescission ruling was dismissed with no order as to costs.

[2] I have considered the grounds upon which leave to appeal is sought, as well as the written submissions. I am unpersuaded that the intended appeal would have a reasonable prospect of success. This is so principally because there is no reasonable prospect that an appeal court would conclude differently, having regard to the following:

2.1 As was acknowledged in the applicant's founding affidavit in the review application, the rescission application was "*terse*" and ought to have contained a proper explanation for the default.

2.2 The argument that service of the CCMA notice of set down on the applicant was defective on the basis that it never chose the e-mail address in question as the address for service (despite it being the applicant's e-mail address), is based on a fundamental misunderstanding of what CCMA rule 5(1)(c) requires. That rule permits service to be on a party's e-mail address (which the party need not specifically identify or choose for service). As an alternative, it provides for the person to choose another alternative address for receiving service. It follows that the fact that the applicant did not specifically choose the e-mail address for service, does not render the service defective.

2.3 The argument that the Commissioner failed to adequately have regard for the applicant's prospects of success is not sustainable, but ultimately, nothing turns on this. On an overall basis, it was not established (based on the sparse explanation advanced) that the award was erroneously sought or erroneously made in the absence of the applicant, and that the rescission ruling is reviewable.

2.4 The further intended grounds of appeal pertain to matters that were thoroughly considered (and dealt with) in the proceedings and main judgment and are plainly unsustainable.

[3] There are also no other compelling reasons why the intended appeal should be heard.

Order

1. The application for leave to appeal is dismissed.

R. Itzkin
Acting Judge of the Labour Court of South Africa