



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR2748/22

In the matter between:

ARCELORMITTAL SOUTH AFRICA LIMITED

Applicant

and

**NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA ("NUMSA")**

First Respondent

SOLIDARITY

Second Respondent

**ASSOCIATION OF MINeworkERS AND
CONSTRUCTION UNION ("AMCU")**

Third Respondent

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

Fourth Respondent

JOYCE NKOPANE N.O.

Fifth Respondent

NOMAZOTSHO MEMANI N.O.

Sixth Respondent

KGAKGAMATSO MOTEBE N.O.

Seventh Respondent

Decided: In chambers

Delivered: 07 March 2025

JUDGMENT

ERASMUS, AJ

Introduction

[1] This is an application for leave to appeal against part 1 of the judgment of this Court handed down on 8 October 2024 in terms of which the Court upheld the designation ruling made by the Essential Services Committee (ESC) dated 16 November 2022.

[2] The parties are cited and referred to as they were in the review application. NUMSA and AMCU have filed representations in opposition to the application.

[3] The application for leave to appeal and the papers herein were only brought to my attention towards the end of January 2025, and I felt it expedient to deal with the matter in chambers. The parties have filed extensive written representations.

Test for leave to appeal

[4] It is trite that leave to appeal is not simply for the taking.

[5] Section 17 of the Superior Courts Act¹ regulates instances in which leave to appeal may be granted, and Section 17(1) provides that leave to appeal may only be given where the judge concerned is of the opinion that:

- ‘(a) (i) the appeal would have a reasonable prospect of success; or

¹ Act 10 of 2013.

- (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.'

[6] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha and Another*² stated that:

'[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.'

Merits of the application

[7] Arcelormittal averred that the Court failed to consider certain facts which showed that there would be endangerment and safety risks in the operation of blast furnaces and coke batteries if same is not shut down in a controlled and well-managed manner and that same resulted in a finding that the whole or part of the population would not be affected. Arcelormittal's contentions in this regard are without merit.

² (1221/2015) [2016] ZASCA 176 (25 November 2016) at paras 16 to 17.

[8] In considering the review application, the Court accepted that the evidence had shown that the blow down of Furnaces C and D in 2022 took a total of 5.7 days, from start to finish. The Court furthermore found that the evidence had demonstrated that there are inherent risks to both personnel and the plant in the operation of these services.

[9] The following two grounds raised by Arcelormittal relate to the Court having found that the definition of an essential service as set out in section 213 of the Labour Relations Act³ (LRA) and in particular, the portion that refers to “*the whole or any part of the population*” being endangered in so far as the life, personal safety or health of such is concerned when the service is interrupted, does not include an employer’s own workforce but instead refers to large groups of people not identifiable with any manner of precision.

[10] It is contended on behalf of Arcelormittal that an employer’s own workforce constitutes “*the whole or any part of the population*”. In particular, it is contended that the employer’s workforce are members of the population as envisaged under section 213 of the LRA by virtue of them being part of a community and inhabitants of South Africa.

[11] This Court remains of the view that the workforce of Arcelormittal as they pertain to the facts of this particular matter, is not included in the definition of essential services, particularly insofar as the definition refers to “*the whole or any part of the population*” in the circumstances of this case for the reasons already advanced.

[12] The Court then turns to whether there may be other compelling reasons for granting leave to appeal. This matter is of great importance to all parties. Arcelormittal’s operations would be significantly impacted by the judgment. Any adverse finding would impact the Constitutional right of the members of the respondent unions to strike. The health and safety of the employer’s workforce, who may act in haste to wind down operations in preparation of a strike and/or whose

³ Act 66 of 1995, as amended.

health and safety is placed at risk by either shutting down or not safely shutting down operations and then facing risks upon restarting operations, are also at stake. Another Court may come to a different conclusion in interpreting the definition of 'essential services' in section 213 of the LRA or may conclude that such definition unduly infringes upon the right to life of the employer's workforce as enshrined in the Constitution, considering the circumstances of this particular matter.

[13] In the circumstances, I make the following order:

Order

1. The application for leave to appeal is granted.
2. Costs are costs in the cause.

L Erasmus

Acting Judge of the Labour Court of South Africa