



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR 1425/2022

In the matter between:

**INDEPENDENT COMMUNICATIONS AUTHORITY OF
SOUTH AFRICA (ICASA)**

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER DHELIWE MAVUMA N.O

Second Respondent

NEHAWU obo MEMBERS

Third Respondent

Decided in Chambers

Delivered: This ruling was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be on 05 May 2025

RULING – APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

[1] On 9 January 2025, this Court delivered a judgment and order in terms of which the arbitration award issued by the Second Respondent (Commissioner) under Case Number GATW12895/21 was reviewed and set aside.

[2] The Commissioner's award was substituted with an order that the failure by the Applicant (ICASA) not to pay to the Third Respondents (Employees) a performance bonus for 2019/2020FY, did not constitute an unfair labour practice as contemplated in section 186(2(a) of the Labour Relations Act¹.

[3] The Third Respondents seek leave to appeal against the whole judgment and order of the Court. The application is opposed by the applicant in the review application. For the sake of convenience, the parties will remain cited as they were in the review application, since that is the manner of citation the third respondents elected in bringing this application for leave to appeal.

[4] Section 17(1)(a) of the Superior Courts Act² governs applications for leave to appeal. It provides that leave to appeal may only be given where the judge is of the opinion that the appeal would have a reasonable prospect of success, or where there is some other compelling reason why the matter should be heard.

[5] The test for leave to appeal is more onerous as reiterated in *S v Smith*³ as follows;

'What the test for reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of success. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised

¹ Act 66 of 1995, as amended.

² Act 10 of 2013

³ 2012 (1) SACR 567 (SCA)

as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’

[6] The background to the dispute between the parties and the grounds for and against the relief sought in the review proceedings are issues sufficiently dealt with in the main judgment. Equally dealt with in that judgment are the reasons for the order.

[7] It is settled that appeals should be limited to those matters which are truly deserving of the attention of the appeal courts.⁴ This is particularly so in respect of labour disputes, since the scheme of the LRA demands the expeditious resolution of disputes. As such, leave to appeal in this Court ought to be limited to those disputes which have a reasonable prospect that another court, (the Labour Appeal Court), would treat the factual matrix of the matter differently or there is a legitimate legal issue which deserves the attention of the Labour Appeal Court (LAC).⁵

[8] Having had regard to the grounds for leave to appeal, and the submissions made on behalf of the parties, it is my view that upon a reflection of the judgment against which leave to appeal is sought, there is no basis for any conclusion to be reached that the appeal would have a reasonable prospect of success, or that there are some other compelling reasons why the matter should be heard. Effectively, there are no novel or legitimate points of law requiring the attention of the Labour Appeal Court.

[9] Accordingly,

Order:

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

Edwin Tlhotlhlalemaje
Judge of the Labour Court of South Africa

⁴ *Kruger v S* 2014 (1) SACR 647 (SCA) at para 3.

⁵ *Martin & East (Pty) Ltd v National Union of Mineworkers & others* (2014) 35 ILJ 2399 (LAC) at 2405J – 2406E.