



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 267/2020

In the matter between:

STATE INFORMATION TECHNOLOGY AGENCY

Applicant

and

COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION

1ST Respondent

COMMISSIONER: D NSOANE N.O

2ND Respondent

ALEXANDER STANLEY MACASKILL

3RD Respondent

Decided: In Chambers

Delivered: 09 October 2025

JUDGEMENT:

APPLICATION FOR LEAVE TO APPEAL

MATYOLO, AJ

Introduction

- [1] This is an application for leave to appeal to the Labour Appeal Court, against the judgment and order of the Labour Court delivered on 23 June 2025.

Grounds of appeal

- [2] The grounds upon which the applicant (third respondent in the review application) relies for his application for leave to appeal are set out fully in the application for leave to appeal. In essence, the applicant contends that the Court erred in law and in fact in granting the review application.

- [3] Specifically, the applicant raises the following issues with the judgment of this Court:

- 3.1. The Court went beyond the grounds of review that were advanced by SITA in its application for review of the award in circumstances where the Court was required to determine the merits of the review application on the grounds that were set out in SITA's founding and supplementary affidavits.
- 3.2. Instead of having regard to the grounds of review advanced by the applicant, the Court conducted an assessment of the arbitration award proceedings and made factual findings that were not advanced or relied upon by the applicant. In doing so, the submissions go, the Court denied the applicant an opportunity to refute or challenge the conclusions arrived at by the Court, which led the Court to arrive at incorrect conclusions.
- 3.3. At Paragraph 28 of its judgment, the Court concluded that the evidence was that the earlier renewal on which the applicant (third respondent in the review application) sought to rely on were in fact, improperly obtained because of misrepresentation on the motivations and the basis that the costs were recoverable. This finding of the Court was made in circumstances where the commissioner made no factual

findings in regard thereto and where SITA made no reliance on such in its review application papers.

3.4. In finding that the applicant (third respondent in the review application) could not have had any reasonable expectation of renewal of his fixed term contract, ostensibly based on the Court's conclusion that the applicant knew that his line manager could only motivate for the extension and the extension could only be approved by the staffing panel, the Court ignored in totality the fact that:

3.4.1. The applicant had previously been provided with consecutive fixed term contracts.

3.4.2. Nothing in the applicant's contract of employment, as amended by the last addendum on 31 March 2017, created any justification for the contract being terminated at the end of the duration. The addendum, amongst other things, included that the third respondent was required to participate in any new client implementation projects that SITA Implementation Services may negotiate with clients as required.

3.4.3. At the time of termination, the third respondent's services remained needed due to project requirements. There existed future work for the respondent to perform, and he was, amongst others, assigned to a large project, the E-Health project.

3.4.4. In terms of his performance appraisal, the third respondent scored as an excellent/above average performer.

3.4.5. The applicant's (third respondent herein) line Manager, Ms Jenny Naidoo, requested the approval for the extension of the third respondent's fixed term contract and motivated the request through a business case in July 2018.

- 3.4.6. SITA did not notify the applicant that his fixed term contract would not be renewed again.
- 3.4.7. The Head of Department, Ms Mariette van Wyk, also indicated that the applicant's contract was likely to be extended and that she supported same.
- 3.4.8. The business case for the extension of the applicant's fixed term contract was never concluded and never served before the staffing panel or placement committee for consideration, as provided for by SITA's processes.
- 3.4.9. The applicant's position was budgeted for the following 24 months, and the renewal of the fixed term contract was supported by the finance department.
- 3.4.10. On the business case, Ms Mamaregane did not recommend that the contract be extended, but she noted that, *"the employee is misplaced in IFASS in with the current macro structure. He is an architect & need to be transferred to GIM. GIM must be engaged for possible extension by GIM & not [I] FASS"*.
- 3.4.11. During cross-examination, Ms Mamaregane stated that she was not saying Mr Macaskill's contract should not be renewed, but that it should be renewed for a different area, the GIM space. Mamaregane confirmed that she did not even know what the acronym GIM stood for.
- 3.4.12. SITA did not present any evidence to rebut the third respondent's evidence that there was still work which the applicant was required to perform which justified the extension of the contract. In fact, SITA's witness confirmed that the third respondent was working on various projects at the time of his dismissal.

- [4] Had the Court had regard to these facts, he would not and could not have concluded that the applicant had no reasonable expectation of the renewal of his fixed contract.
- [5] Had the Court correctly assessed the undeniable facts, it would have concluded that subjectively the third respondent had a reasonable expectation and that based on the objective facts such an expectation was justifiable, as the commissioner correctly found.
- [6] The Court's misdirection in respect of the facts of the matter is clear in paragraph 25 of the judgement where the honourable Court found that, *"the extension was dependent on an identification of a need"* which the Court incorrectly found not to have existed, in circumstances where the facts established that there was both a need for extension of the applicant's contract and that SITA in fact budgeted for the applicant's continued employment.
- [7] The Court found in paragraph 26 of its judgment that the commissioner's finding that, *"the recoverability of money was not raised in previous contracts and that it could not be entertained when the contract was up for renewal"*, was not in line with the evidence that was led during the arbitration proceedings and concluded in paragraph 28 that, *"it is not clear why the applicant ought to have continued to renew third respondent's contract in circumstances where the costs of the third respondents employment could not be recovered"* in circumstances where:
- 7.1. The third respondent failed to present any evidence that the costs for the renewal of the applicant's fixed term contract could or would not be recovered.
 - 7.2. The third respondent's contract or the renewal thereof was not dependent on any "costs recovery".
 - 7.3. The decision not to renew the applicant's contract was not taken by the staffing panel, who had the sole authority to do so, subject to further consideration by the executive committee.

- [8] The Court's finding [at paragraph 30] that, "*the renewed contracts that the third respondent seeks to rely on contained terms that were emphatic in discouraging the third respondent from believing that the contract would be renewed*" and that, "*not only were the terms of contract determinative but the previous extensions/renewals were based on misrepresentation*", is with respect, factually irreconcilable with the evidence presented and is not premised on the grounds of review advanced by the applicant and is based on the incorrect application of the legal principles.
- [9] The review application was not premised on any misdirection or incorrect factual conclusions arrived at by the commissioner in respect of the previous extensions or renewals, and that was thus not an issue that the Court could *mero motu* raise without affording the third respondent an opportunity to respond to.
- [10] Had the Court followed the applicable authorities, it would have concluded that in most instances, fixed term contracts contain standard clauses expressly stating that the employee had no right to renewal or expectation of a renewal but that it should be accepted on the authorities that despite such clauses, a reasonable expectation could still arise if assurances, existing practices and the conduct of an employer led an employee to believe that there was hope for renewal whether on a temporary or an indefinite basis.
- [11] Before I deal with the grounds for leave to appeal, I wish to set out the applicable legal position in the determination of an application for leave to appeal.

Principles governing applications for leave to appeal

- [12] Applications for leave to appeal are governed by sections 16 and 17 of the Superior Courts Act¹. Section 17 provides as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

¹ Act 10 of 2013.

- (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.'

[13] In *Acting National Director of Public Prosecution and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*², Ledwaba DJP writing for the full court referred with approval to the following dictum appearing in *Mont Chevaux Trust v Goosen*³ in which Bertelsmann J held as follows:

'The threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Conwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against'.

[14] In *S v Smith*⁴, the Supreme Court of Appeal held that the test of reasonable prospects of success postulates a dispassionate decision, based on facts and the law, that a Court of appeal could reasonably arrive at a conclusion that is different from that of the trial Court.

[15] Therefore, to succeed, an appellant must convince the Court that proper grounds exist for succeeding in the appeal and that those grounds are not

² (19577/09) [2016] ZAGPPHC 489 (24 June 2016) at para 25.

³ 2014 JDR 2325 (LCC) at para 6.

⁴ 2010 (1) SACR 476 (SCA); [2010] ZASCA 84.

remote. In other words, there must be a sound, rational basis for the conclusion that there are prospects of success.

- [16] The Labour Appeal Court in *Martin & East (Pty) Ltd v National Union of Mineworkers & others*⁵ called for caution as to when leave to appeal is to be granted. It drew attention to the fact that the statutory imperatives of expeditious and effective resolution of disputes necessarily require that appeals are limited to those matters in which there are reasonable prospects that a factual matrix could receive a different treatment, or there is some legitimate dispute on the law.
- [17] Regarding this application for leave to appeal, it was common cause between the parties that the renewal of the applicant's contract would ordinarily be preceded by a process in which the applicant's line manager would put up a motivation for the extension of the contract. It was also common cause that the motivation would be considered by a staffing panel, which would be the body that would make the decision to renew or not to renew the contract.
- [18] The evidence before the Commissioner included the evidence regarding the previous renewals and pointedly, the evidence that the costs of employing the applicant have not been recoverable despite the representation in the motivations that they were, in fact, recoverable. The evidence was also that at some point Ms Naidoo had to change the motivation to reflect that the costs of employing the applicant were, in fact, recoverable. The Commissioner found that the recoverability of the costs of employment was not raised in previous renewals. That finding is not borne out by the facts in evidence. Secondly, despite the evidence and without explaining the basis of his finding, the commissioner concluded that the expectation of the applicant was "off cause" reasonable.
- [19] The Labour Appeal Court in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation & Arbitration & others*⁶ stated that a reviewing Court must ascertain whether the arbitrator considered the principal

⁵ (2014) 35 ILJ 2399 (LAC); [2013] ZALAC 35 at 2406 A.

⁶ (2014) 35 ILJ 943 (LAC); [2014] 1 BLLR 20 (LAC) at para 16.

issue before him/her; evaluated the facts presented at the hearing and came to a conclusion that is reasonable. In this matter the Commissioner misdirected himself when he found that recoverability of the costs of employment was never an issue. In fact, recoverability was at the centre of the non-renewal. That was raised at arbitration and is one of the grounds on which the review of the arbitration award was sought.

[20] In coming to its conclusion the Court *a quo* considered the fact that in his submissions to support an expectation of renewal the applicant relied on the fact that his contract had been previously renewed. That invited a scrutiny on the circumstances of the previous renewals. The evidence revealed that the motivations included a submission that the costs of the applicant's employment would have been recovered, which turned out to be false. The evidence showed that there was then an attempt to say that the applicant could be accommodated at some other place other than the one for which he was brought to add value.

[21] Other than bald allegations of an incorrect assessment of the facts and misapplication of the law, the applicant has failed to make out a proper case for the granting of the application for leave to appeal.

[22] I am persuaded that there are reasonable prospects that the factual matrix in this case might receive a different treatment on appeal. I have also considered the fact that this matter does not raise any novel points of law that need to be dealt with by the Labour Appeal Court.

[23] Accordingly, the application for leave to appeal is dismissed with no order to costs.

AJ Matyolo

Acting Judge of the Labour Court of South Africa