

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS868/17

In the matter between:

Applicant

JOHN PANTI MOKOTEDI

and

Respondent

SISHEN IRON ORE COMPANY (PTY) LTD

Heard: 7 March 2022 (In Chambers)

Delivered: 8 March 2022 (via email to the parties)

Summary: Application for leave to appeal – absolution from the instance constitutes a final order of the Labour Court thus appealable. The application does not meet the requirements of section 17 (1) (a) of the Superior Courts Act, 2013. Held: (1) The application for leave to appeal is dismissed with no order as to costs.

JUDGMENT - LEAVE TO APPEAL

MOSHONA, J

Introduction

[1] On 08 February 2022, this Court handed down an *ex tempore* judgment in terms of which it granted the respondent an application for an absolute from the instance, due to the insufficiency of evidence. The applicant is displeased with the judgment and now seeks leave to appeal against the whole judgment. The application stands opposed.

Evaluation

[2] The test whether leave to appeal should be granted remains that spelled out in section 17(1) of the Superior Courts Act¹. In terms of section 17 (1) (a), there are two bases upon which a judge may grant leave to appeal; namely; (a) where the appeal would have reasonable prospects of success; or (b) where there is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[3] Before this Court can consider whether the application meets the test, it must consider whether the order can be re-considered or is appealable.

Is the order appealable?

[4] Section 173 (1) (a) of the LRA provides that subject to the Constitution and despite any other law, the Labour Appeal Court has exclusive jurisdiction - to hear and determine all appeals against the final judgments and final orders of the Labour Court. It is conspicuous from the provisions of the section that an appeal lies only against final orders.

[5] Is absolute from the instance a final order? This question seem to have been definitively settled by the Supreme Court Appeal in *Liberty Group*

¹ Act 10 of 2013. See *Seathlo and Another v CEPPWAWU and others* [2016] 37 ILJ 1485 (LC)

*Limited t/a Liberty Life v K and D Marketing*², where the learned Ledwaba AJA, writing for the majority, held:

[14] The dictum of *Steytler* cited above makes it clear that it is established practice that a decision of absolution from the instance in a trial has the effect of a definitive sentence. Simply put, a decision on the sufficiency of evidence led in that suit, by way of an order of an absolution from the instance, has a definitive effect and is susceptible to appeal. The Court is *functus officio* and has no power or jurisdiction to hear any further evidence in relation thereto.

[15] ...The short answer to that proposition is that Liberty had its day in court. That it provided insufficient evidence to sustain its case is entirely its own fault...

- [6] When regard is had to the grounds submitted by Mr Mokotedi, this Court observes traces of a plea of re-consideration. The very first ground is couched in the following manner: “*Applicant’s plea with Honourable Justice Moshwana to re-consider evidence merits brought to him on his judgement on the case as on the 07-08 January 2022*”. Unfortunately, for Mr Mokotedi, this Court cannot reconsider.

Does the application meet the test?

- [7] As submitted by the respondent, the application does not meet the test for leave to appeal as enshrined in section 17 of the Superior Courts Act, 2013. It is unnecessary to take stock of the grounds put forward by Mr Mokotedi. There is no certainty that the LAC may come to a different conclusion.

² (Case no 1290/18) [2020] ZASCA 41 (20 April 2020)

[8] Again, this Court implores Mr Mokotedi to seek a proper legal advice before it is too late.

Order

[9] In the results, I make the following order:

1. The application for leave to appeal is hereby refused.
2. There is no order as to costs.

GN Moshwana

Judge of the Labour Court of South Africa

LABOUR COURT

Appearances
None