



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Case no: C 650/14

In the matter between:

Andrew James SHELTON

Applicant

and

**THE STATUTORY COUNCIL FOR
THE PRINT NEWSPAPER AND
PACKAGING INDUSTRIES**

First Respondent

DAVE WILSON N.O.

Second Respondent

BIDVEST DATA (PTY) LTD

Third Respondent

Delivered: 31 March 2016

RULING ON LEAVE TO APPEAL

STEENKAMP J

Introduction

- [1] The applicant, Mr Shelton, seeks leave to appeal against my judgment of 13 October 2015.
- [2] The application was only delivered on 29 January 2016. He also applies for condonation for the late filing of the application. And he applies for condonation for the late filing of his written submissions in terms of rule 30(3A). Those submissions were delivered on 26 February 2016.

The test for granting leave to appeal

- [3] The test to be applied in an application for leave to appeal is that referred to in s 17 of the Superior Courts Act.¹ Section 17(1) provides:

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

- (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 judgements 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.

- [4] The traditional formulation of the test requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment *a quo*. The use of the word “would” in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion. This is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal

¹ Act 10 of 2013.

Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.²

Condonation

[5] I will consider the applications for condonation using the well-known principles in *Melane v Santam Insurance Co Ltd*.³

Application for leave to appeal

[6] Firstly, the applicant does not have good prospects of success on appeal. The arbitrator reached a conclusion that a reasonable arbitrator could reach.

[7] The application was delivered about three months after the 15 day period in rule 30(3A)(1) had expired. It is an excessive delay.

[8] The applicant's explanation is that he had broken two ribs on 16 October and he was "unable to move". He does not adequately explain why he could not give his attorney oral instructions on the application for leave to appeal for a period of three months. The only other part of the explanation is that his attorneys, Cornel Stander and Duncan Garland, were on leave from mid-December to mid-January. And then, at an unspecified date, his attorneys briefed counsel to draft the application, but their chosen counsel got married on 23 January 2016 (three months after the application for leave to appeal was due). It is a poor explanation.

Written submissions

[9] The applicant only filed his written submissions on 26 February 2016. His explanation is that his attorney withdrew on 17 February (a week after the submissions were due). The same attorney is now back on record.

² See the judgment by Davis JA in *Martin & East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Oasys Innovations (Pty) Ltd v Henning & another* [2015] ZALCCT 65.

³ 1962 (4) SA 531 (A).

[10] It is a poor explanation in the context of a litany of condonation applications – in the review application, the late filing of his heads of argument in that application, the application for leave to appeal, and the late filing of submissions in this application.

Conclusion

[11] The applicant's prospects of success in the application for leave to appeal are poor. The delay in delivering the application is excessive. The explanation is also poor.

[12] For all these reasons, the applications should be dismissed. The applicant persisted in bringing further applications with little or no prospects of success. In law and fairness, costs should follow the result.

Order

[13] I therefore rule as follows:

13.1 The application for condonation for the late filing of the application for leave to appeal is dismissed.

13.2 The application for condonation for the late filing of the applicant's submissions is dismissed.

13.3 The application for leave to appeal is dismissed.

13.4 The applicant is ordered to pay the third respondent's costs.

Anton Steenkamp
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: Morné Aggenbach

Instructed by: Duncan Garland of Cornel Stander attorneys.

THIRD RESPONDENT: Edwin Ellis of Edward Nathan Sonnenbergs.

LABOUR COURT