



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case No JR1498/2005

In the matter between:

T E MAMPA

Applicant

and

SOUTH AFRICAN POLICE SERVICE

First Respondent

SAFETY AND SECURITY SECTORAL

BARGAINING COUNCIL

Second Respondent

MRS N MBDILENI

Third Respondent

Date: 8 July 2016

Decided in chambers

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

CHAVOOS, AJ

- [1] This is an application for leave to appeal against a judgment delivered by this Court on 28 May 2014. An application for leave to appeal was filed with this Court on 17 June 2014. On 1 September 2014, a Court directive was issued for the parties to file their written submissions in terms of Rule 30 of the Rules of this Court. In terms of clause 15.2 of this Court's Practice Manual, the applicant's written submissions ought to have been

filed within 10 days from the date that he was informed to file his written submissions: i.e. on or before 15 September 2014. The applicant filed his written submissions on 16 January 2015, being four months late. No condonation has been sought for the late service and filing of the applicant's written submissions. For this reason alone, the applicant's application for leave to appeal ought to be dismissed.

[2] The flagrant disregard of this court's directives, particularly, where the applicant is seeking to appeal a decision of this court cannot be condoned. The conduct of litigants in failing to observe the rules and directives of this court is not acceptable. I have also considered the applicant's grounds of appeal which can be condensed under the following grounds:

3.1 The Court erred in granting the first respondent condonation for the late filing of its answering affidavit and not making a commensurate cost order.

3.2 The Court erred in placing reliance on the evidence of the first respondent's witnesses as presented at the arbitration proceedings which is alleged to have contained material contradictions.

3.3 The Court erred in accepting the commissioner's findings which the court found was the crux of the matter, namely, that the applicant had not furnished a satisfactory explanation as to why a hijacked vehicle was found in his garage.

3.4 The Court erred by placing the onus on the applicant to prove that he had a satisfactory explanation for the hijacked vehicle being parked in his garage.

3.5 The Court erred in not finding that the gross irregularities committed by the commissioner rendered the award susceptible to be reviewed and set aside.

3.6 The Court erred in rejecting the evidence of the applicant's witnesses and the alibi.

- [4] It is trite that the test to be applied in applications for leave to appeal is whether another court might reasonably come to a different conclusion.
- [5] In *Martin and East (Pty) Ltd v National Union of Mine Workers and Others*,¹ the Court held that there is a stricter test that is applicable for appeals to the LAC. The Court held, in particular, that the LRA was designed to ensure the expeditious resolution of industrial disputes and this means that the Labour Court needs to be cautious when leave to appeal is granted. There are two sets of interests to be considered – first, the interest of the appellant which is entitled to have his rights vindicated if there is a reasonable prospect that another court might come to a different conclusion and the interests of the respondent which may have to wait years for an appeal to be prosecuted. Second, where the matter is resolved on own facts, no novel point of law, no misinterpretation of existing law, the matter must end at the Labour Court.
- [6] Bearing the above in mind, I now turn to deal with the broad grounds of appeal below.
- [7] In respect of the issue of condonation, both parties had filed their respective papers late. The applicant was late with filing the record whilst the first respondent was late in filing its answering affidavit. I had put this to both parties' Counsel and they had agreed that I may condone the late filing of their respective pleadings and simply determine the application on its merits. In the circumstances, there is no merit to the submission that the Court had erred in misdirecting itself in not upholding the point *in limine*. On the issue regarding material contradictions as they appeared before the third respondent in the evidence of the applicant's witnesses, I remain of the view that such contradictions did not affect the outcome and cannot be said to have resulted in an unreasonable decision being made. The commissioner considered the evidence holistically and, in my view, her findings on the fairness of the dismissal is not a decision that is so unreasonable that no reasonable decision maker could have reached.

¹ (2014) 35 ILJ 2399 (LAC).

[8] Insofar as the issue of onus is concerned, the third respondent had the onus of proving that the dismissal of the applicant was fair. It was common cause at the arbitration that a hijacked vehicle was tracked and found in the applicant's garage. The applicant was a member of the South African Police Service. He was required to provide a satisfactory explanation as to why a stolen and hijacked vehicle was tracked and found in his garage. His explanation was that it was stolen by his "homeboy" or an individual who had rented a room on his property. Without such evidence being corroborated, it was rejected and found not to be satisfactory. Whilst there were contradictory versions in respect of some of the evidence given at the arbitration proceedings in respect of both the applicant's and first respondent's witnesses, the commissioner's finding against the applicant on a balance of probabilities is not one that a reasonable decision maker could not have reached.

[9] All the grounds of appeal upon which the applicant seeks to rely are not new or novel points and were relied upon in argument during the review application. The applicant has, in my view, not satisfied the appropriate threshold for leave to appeal to be granted and I do not believe that another court hearing this matter would come to a different conclusion.

[10] For the above reasons, even if I am wrong in finding that leave to appeal must be refused in the absence of an application for condonation having been filed and condonation granted, the application for leave to appeal nonetheless stands to be dismissed on the basis that I do not believe that another court might reasonably come to a different conclusion on the merits of the appeal.

[11] In the premise, I make the following order:

11.1 Leave to appeal is refused.

11.2 There is no order as to costs.

Chavoos, AJ

Acting Judge of the Labour Court of South Africa

LABOUR COURT