



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No: **JR1065/2016**

In the matter between:

**IXOLO TRADING 12 (PTY) LTD t/a GALFERRO
GALVANISERS**

Applicant

And

**THE METAL AND ENGINEERING INDUSTRIES BARGAINING
COUNCIL**

1st Respondent

THE INDEPENDENT EXEMPTIONS APPEAL BOARD

2nd Respondent

NUMSA OBO MEMBERS

3rd Respondent

Decided: In Chambers

Date delivered: 13 April 2017

**Summary: Application for leave to appeal. No prospects of success on appeal.
Application dismissed.**

JUDGMENT - APPLICATION FOR LEAVE TO APPEAL

NAIDOO AJ

Introduction

- [1] This is an application for leave to appeal (“**the application**”) against my findings and order handed down in this Court on 2 February 2017.
- [2] The respondents have not opposed the application.

The test for leave to appeal

- [3] For the applicant to succeed in the application it must demonstrate that it has reasonable prospects of success on appeal. This requires of me to “dispassionately” assess whether the Labour Appeal Court (“**the LAC**”) could, on the facts and/or law, reasonably come to a different decision. The applicant is required to show that it has a realistic prospect of succeeding on appeal. A remote prospect, or mere possibility, of succeeding on appeal is not sufficient. The applicant’s case must not be hopelessly unarguable before the LAC. On the contrary, the applicant’s success on appeal must be based on prospects that are sound and rational.¹
- [4] The LAC has directed that caution be exercised by a judge of this Court when seized with an application for leave to appeal. In this regard the judge is required to ensure that the matters that are sent to the LAC on appeal are limited to those in which there is a reasonable prospect that the facts could receive a different treatment and/or where there is some legitimate dispute on the law.²

The applicant’s grounds for leave to appeal

- [5] The applicant set out two grounds for leave to appeal. The first ground is that I had incorrectly applied the *rationality* test as enunciated by Van Niekerk J in *Building Industry Bargaining Council (Southern and Eastern Cape) v*

¹ *Khena v Passenger Rail Agency of South Africa* (J2767/16) [2017] ZALCJHB 32 (1 February 2017) at [3] (“the *Khena* case”) and *S v Smith* 2010 (1) SACR at 576 (SCA)

² The *Khena* case at [4]; *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC) and *Kruger v S* 2014 (1) SACR 369 (SCA)

*Commission for Conciliation Mediation and Arbitration and Others*³; whereas the correct test that should have been applied is the *reasonableness* test as enunciated in the *Sidumo*⁴ judgement.

- [6] The second ground is that I had incorrectly made the finding that the first respondent's decision, in refusing the exemption, was a rational one because, as I had found, it was not true that the applicant could not afford to pay the monthly contributions as it had alleged.

Conclusion

- [7] I did not make any adverse order against the applicant based on whether the third respondent was served with the review application. I accept that the review application was served on the third respondent as pointed out by the applicant.
- [8] I have carefully considered the submissions made by the applicant in the application and its *written submissions in terms of Rule 30(3A)* in the light of the grounds of appeal set out in the application. It is not necessary to repeat those submissions in this judgment. The applicant has not made out a case that the LAC would come to a different conclusion than the one made by me in this Court. The applicant does not have prospects of success on appeal.

Order:

- [9] The application for leave to appeal is dismissed.

Naidoo AJ
Acting Judge of the Labour Court

³ [2011] 4 BLLR 330 (LC)

⁴ *Sidumo & another v Rustenburg Platinum Mines Ltd & others* [2007] 12 BLLR 1097 (CC)