



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS 545/16

In the matter between:

21ST CENTURY LIFE (PTY) LTD

Applicant

And

GLADYS NOMBEWU

Respondent

Decided: In Chambers

Delivered: 19 October 2017

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO AJ

Introduction

- [1] The applicant, 21st Century Life (Pty) Ltd, seeks leave to appeal against the whole of my judgment delivered on 14 September 2017.

The grounds

- [2] The grounds on which the applicant relies spans over five pages and repeating them will burden this judgment unduly. I am nevertheless satisfied that the main judgment deals adequately with each one of the aspects or grounds raised. The applicant is reminded that it is not only preferable but also helpful to keep its grounds of appeal concise and to the point. It is therefore prudent to refer to the remarks of Leach J (as he then was) in *Songono v Minister of Law and Order*¹. My brother Goosen J, having referred to the *Songono* judgment, had this to say in the unreported judgment of *Iain Cameron McLaggan v The State*², the sentiment of which I share:

“[8] The notice of application in this instance sets out an elaborate discussion of and analysis of the minutiae of the judgment and the evidence which apparently exists to contradict it. At times the “grounds” are couched in exaggerated terms reflecting the apparent failings of the judgment. Reference is made to authorities and in many respects the so-called grounds of appeal are formulated as submissions ordinarily advanced in argument. The tone indicates a lack of respect.”

The test for granting leave to appeal

- [3] The test for granting leave to appeal is stipulated as follows in the Superior Courts Act³:

“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;

¹ 1996 (4) SA 384 (E)

² Case No CC 70/2011 delivered 04 Oct 2012

³ Section 17 of the Superior Courts Act, 10 of 2013

- (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 use of the word “would” in section 17(1)(a)(i) denotes raising the threshold of the reasonableness of the prospects of success. Previously all that was required for the applicant was to demonstrate that there was a reasonable prospect that another court might come to a different conclusion.
- [5] I found that the respondent, Ms Nombewu, was dismissed based on operational requirements, that the dismissal was both procedurally and substantively unfair and that the respondent had not resigned as maintained by the applicant/employer. The Labour Court being a court of fairness and equity and having considered all the evidence before me during the trial I found that it was just and equitable to grant the orders as prayed for by the respondent/employee. The quantification of such figures was never disputed during the trial.
- [6] Having dispassionately considered the grounds of appeal and written submissions by the applicant and the respondent, I am of the view that the applicant has not succeeded in meeting the test for leave to appeal to be granted to as it has no prospects of success on the merits. The application must therefore fail.

Costs

- [7] The general rule is that costs should follow suit. There is no reason why the general principle should be deviated from.
- [8] In the premises, the following order is made:
1. The application for leave to appeal is dismissed.

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

M.C. Mamosebo
Acting Judge of the Labour Court of South Africa

Appearances

For the applicant:

Mr S.M Mokono
S.M Mokono Attorneys

For the respondent:

Mr M.R Sehunane
Sehunane Attorneys

LABOUR COURT