



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 2032/15

In the matter between:

JOHN RAMOTLOA SEKWATI

Applicant

and

CCMA

First Respondent

COMMISSIONER NGWENYA N.O.

Second Respondent

EDCON GROUP (PTY) LTD

Third Respondent

Delivered: 8 December 2017

RULING ON LEAVE TO APPEAL

STEENKAMP J

Introduction

- [1] The applicant seeks leave to appeal against my *ex tempore* judgment of 19 April 2017.
- [2] The parties delivered their submissions in terms of rule 30(3A) on 26 May and 6 June 2017 respectively. The judgment was only transcribed and sent to me for editing and signature on 30 May 2017. And despite the parties having filed their submissions by 6 June 2017, exactly 6 months

ago, this was only brought to my attention today, 6 December 2017, for reasons unknown and unfathomable to me.

The judgment

- [3] The applicant was dismissed by the third respondent, Edcon. The arbitrator, Commissioner Dumisani Ngwenya, found that it was fair. The applicant sought to have the award reviewed and set aside. But the award was one that a reasonable arbitrator could reach. Therefore the review application was dismissed with costs.

Grounds of appeal

- [4] Mr *Geldenhuys* raises the following grounds of appeal:
- 4.1 The court did not take into consideration “the full spectrum of evidence” that was led at arbitration.
 - 4.2 The Court erred in finding that the arbitrator’s finding on “guilt” (not a word used by the court) was reasonable.
 - 4.3 The court found (correctly) that the review ground relating to procedural unfairness had been conceded; but despite that, the court should not have found that the arbitrator reasonably exercised his discretion not to award compensation.

Evaluation

- [5] The test to be applied is that referred to in s 17 of the Superior Courts Act, 10 of 2013. 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 judgments 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.

- [6] As Van Niekerk J pointed out in *NAPO v SAPS* (Case no: JR 2704/08), the traditional formulation of the test that is applicable in an application such as this 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 that is sought to be taken on appeal. 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 (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, 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. 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 (See the judgment by Davis JA in *Martin & East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling in *Oasys Innovations (Pty) Ltd v Henning & another* (C 536/15, 6 November 2015).
- [7] In this case, the finding of the arbitrator that the employee was responsible for the disarray in the store was one that a reasonable arbitrator could reach, based on the evidence before him, which he considered carefully.
- [8] Having found that, the arbitrator exercised his discretion with regard to whether any compensation should be awarded for procedural unfairness. He decided that it should not, given the employee’s misconduct. A court on review will not lightly interfere with that discretion.
- [9] I am not of the opinion that an appeal would have reasonable prospects of success.

Order

[10] The application for leave to appeal is dismissed with costs.

Steenkamp J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: C J Geldenhuys.

THIRD RESPONDENT: Shepstone & Wylie.