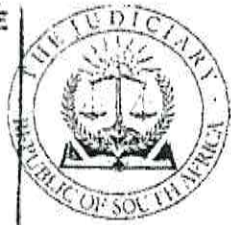


B

THIS IS NOT APPLICABLE

- (1) REPORTABLE YES/NO.
- (2) OF INTEREST TO OTHER JUDGES: YES/NO.
- (3) REVISED.



17/08/2017
DATE

[Signature]

IN THE NATURAL COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS 502/16

In the matter between:

ASSOCIATION OF MINE WORKERS

CONSTRUCTION UNION

THE MEMBERS AS PER ANNEXURE "A"

First Applicant

Second to Further

Applicants

and

NGULULU BULK CARRIERS (PTY) LTD

Respondent

Considered in Chambers

Delivered on: 17 August 2017

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAHOSI AJ

- [1] This is an application for leave to appeal against the whole of the judgment of this Court handed down on the 30th of March 2017 in terms of which the court

[Signature]

dismissed the applicants' main claim with costs. This application is opposed by the respondent.

- [2] In terms of section 166(1) of the Labour Relations Act (LRA),¹ a party to proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. The test in determining whether to grant an application for leave to appeal, is whether there is a reasonable prospect that another court may come to a different conclusion.² Section 17 of the Superior Court Act,³ which applies to the Labour Court, regulates the instances in which the appeal may be granted. Section 17(1) provides:

(1) Leave to appeal may only be given where the judge or judges 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 decisions 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 issue between the parties.'

- [3] In *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*,⁴ the LAC made it clear that leave to appeal is not simply for the taking, and that

¹ Act 66 of 1995.

² See *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC) at 2890B; *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC) at 1443 para 2 and *Tsotetsi v Stallion Security (Pty) Ltd* (2009) 30 ILJ 2802 (LC) at 2804 para 14.

³ Act 10 of 2013.

⁴ (2014) 35 ILJ 2399 (LAC).

AM

the Labour Court must be cautious in granting leave to appeal and assessing the requirement of the prospect of success. In this case, the court stated as follows:

'Before I conclude there is a further comment I wish to make. I indicated that the events in this case took place in 2010. The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the court *a quo*, need to be cautious when leave to appeal is granted, as should this Court when petitions are granted.

There are two sets of interests to consider. There are the interests of the parties such as appellant, namely who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to a different conclusion. There are also the rights of employees who land up in a legal "no-man's-land" and have to wait years for an appeal (or two) to be prosecuted.

This was a case which should have ended in the labour court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court *a quo* misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

It would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.⁵

[4] In this case, the grounds of appeal in summary are that this Court erred in:

'4.1 Dismissing the applicant's main claim as per the Statement of Claim with costs.

⁵ At 2405-2406.

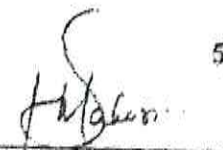
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- 4.2 Finding that the applicants were required to have referred a separate automatically unfair dismissal dispute or an unfair discrimination dispute in terms of section 187(1)(f) of the LRA to the Bargaining Council for the Road Freight and Logistic Industry ("the Bargaining Council") for conciliation
- 4.3 Finding that the automatically unfair dismissal dispute in terms of section 187(1)(f) of the LRA was different and/or separate dispute from the dispute conciliated by the Bargaining Council under the case number NELRFBC 39360.
- 5.4 Finding that it was entitled, on the strength of section 157(4)(a) of the LRA, to refuse to determine the automatically unfair dismissal dispute.
- 4.5 In finding that the alternative claim of an unfair dismissal in terms of section 186(1)(d) of the LRA is *lis pendens*.
- [5] The respondent opposed this application on the basis that there are no reasonable prospect that another court may come to a different conclusion.
- [6] Having had regard to the respondent's submissions and the opposition thereto I am not persuaded that there are reasonable prospects of a successful appeal. As such, I am of the view that this application is without merit and that it must be dismissed.

Order

- [7] Accordingly, I make the following order:
- a) The application for leave to appeal is dismissed.
 - b) No order as to costs.

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Mahosi AJ

Acting Judge of the Labour Court

APPEARANCES:

FOR THE APPLICANTS:

Larry Dave Attorneys

FOR THE THIRD RESPONDENT:

Yusuf Nagdee Attorneys

