THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 1116/2013

In the matter between:

SACCAWU obo RAMONTHLE AND 13 OTHERS **Applicant**

and

SUN CITY **Respondent**

Decided: In Chambers

Delivered: 8 February 2018

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO. J

[1] On 19 October 2017, I handed down judgment in this matter. Subsequent thereto, the Applicants filed an application for leave to appeal against the whole of the judgment. The application is opposed.

[2] It is clear from the papers that the time frames in respect of the filing of submissions were not adhered to and despite the Applicant stating that it will apply for condonation, no condonation application was filed. However, in the interests of justice, I proceed to decide the application.

[3] Both parties have filed submissions in respect of the leave to appeal. I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

Test applicable in an application for leave to appeal

[4] It is trite that leave to appeal is not merely there for the taking. An applicant in an application for leave to appeal must satisfy the court *a quo* that it has reasonable prospects that another court could come to a different conclusion than that arrived at by the court *a quo*.

[5] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment of where there is some legitimate dispute on the law.

[6] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[1] this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

> "The traditional formulation of the test that is applicable in an application such as the present 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. As the respondents observe, the use of the word "would" in s17(1)(a)(i) are 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, as should the Labour Appeal Court when petitions are 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 and East (Pty) Ltd v NUM* (2014) 35 *ILJ* 2399 (LAC), and also *Kruger v S* 2014 (1)

[1] (2016) 37 ILJ 1485 (LC)

SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015)".

[7] In deciding this application for leave to appeal I am also guided by the *dicta* of the Supreme Court of Appeal where it held in *Dexgroup (Pty) Ltd v Trustco Group*[2] that:

> " The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal."

[8] In *Martin and East (Pty) Ltd v NUM and Others*[3] the Labour Appeal Court emphasized that:

> "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.
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> …..I 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."

Grounds for appeal

[9] The Applicants raised a number of grounds for appeal and on consideration of these grounds and submissions, it is apparent that the Applicant approached this Court for leave to appeal by taking points and restating the evidence that

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[2] Unreported judgment of the Supreme Court of Appeal (687/12) [2013] ZASCA 120 (20 September 2013.

[3] (2014) 35 ILJ 2399 (LAC).

was before Court and trying to argue the matter afresh post judgment. In applications for leave to appeal, what the applicant ought to do is to state what was before court, what the court did in error and what the court ought to have done right. The Applicants' submissions are a repetition of the evidence and arguments at trial. I emphasize that the trial was heard over a number of days where extensive evidence was adduced and arguments were heard and these issues were dealt with at length in my judgment.

[10] The Applicants submitted that this Court erred in awarding costs against them. This Court has a wide discretion in awarding cost and Mr Molebaloa made no submissions on the issue of costs, apart from seeking a cost order against the Respondent. This is the normal 'cost to follow the result' position and no submissions were made why the general rule should not be applied. The Applicants failed to demonstrate in what manner I erred in the exercise of my discretion to award costs against them and no case has been made out to overturn the discretion I exercised in this regard.

[11] The Applicants further submitted that the matter involves a novel question of law as it would assist in developing labour law jurisprudence as there are few cases dealing with the provisions of Schedule 8, item 6(1) c) involving third parties. I disagree with this submission for number of reasons. Firstly, this was never the Applicants' pleaded case. The Applicants now seek to make out a new case and this cannot be countenanced. Secondly, the Applicants' understanding of what a novel case is, is incorrect. A novel case is not only a case for which no precedent can be found, but it is a peculiar or extraordinary case arising in the complex and diversified environment which cannot be classified under any of the distinct heads under which jurisdiction has been administered. Whilst it is correct that where the case is novel, further development in jurisdiction is important, this is not a matter that the Labour Appeal Court should indulge as an unnecessary experiment on meritless appeals.

[12] The grounds for leave to appeal as set out by the Applicants have no merit and I see no reason why the Labour Appeal Court should be burdened with this appeal.

[13] In the premises, I make the following order.

Order

1. The application for leave to appeal is dismissed.

2. There is no order as to costs.

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Connie Prinsloo

Judge of the Labour Court

Appearances:

For the Applicants:	Mr M S Molebaloa of M S Molebaloa Inc Attorneys
For the Respondent:	Advocate T Ngcukaitobi and Advocate Z Navsa
Instructed by:	Bowman Gilfillan Attorneys