

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR264/16

In the matter between:

ANDRIES MOFOKENG AND 4 OTHERS

Applicant

and

ROTEK AND ROSHCON SOC LTD

First Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

JOYCE NKOPANE N.O

Third Respondent

Decided: In chambers

Delivered: 07 June 2019

JUDGEMENT: APPLICATION FOR LEAVE TO APPEAL

NKUTHA-NKONTWANA. J

Introduction

[1] This is an opposed application for leave to appeal brought by the applicant against the whole judgment and order handed down by this Court on 13 December 2018. In that Judgment, I dismissed the condonation application for the late filing of the review application with no order as to costs. The parties are cited as they are referred to in the judgment.

[2] There are several grounds for leave to appeal upon which the application is hinged and I do not intend repeating them in this judgment, save to say that I have considered them in deciding this application. The applicant main impugn

is that I applied the wrong test in addressing the prospects of success as a relevant fact in considering the condonation application and applied review test instead of the condonation test.

Merits

[3] In dealing with the application for condonation, I was guided by the *dictum* in *Melane v Santam Insurance Co Ltd*¹ which states:

“... the basic principle is that the court has a discretion, to be exercised judicially upon consideration of all the facts, in essence, it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation thereof, the prospects of success and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there will be no point in granting condonation. What is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate for the prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. The respondent’s interest in finality must not be overlooked.” (Emphasis added)

[4] In this instance, even though I accepted the explanation for the delay, I went further to consider the prospects of success. In doing so, I considered the whole review application and I was satisfied that the arbitration award was unassailable since the applicants failed to show that they had been dismissed or had a reasonable expectation that their contracts would be renewed.

[5] Accordingly, I found the prospects of success to be explicitly deficient and, for that reason, refused the application for condonation.

Conclusion

[6] The test for leave to appeal is trite, the applicant must convince the court *a quo* that it has reasonable prospects of success on appeal. Having considered all the submissions from the parties, I am not convinced that there is a reasonable

¹ 1962 (4) SA 531 (A) at 532- E.

prospect that the factual matrix in this case might receive a different treatment at the appeal.² Put differently, the applicant has failed to make out a case that another court might reasonably arrive at a decision different to the one reached by this Court. The application for leave to appeal should, therefore, be refused. I am, however, disinclined to grant an order as to costs.

[7] In the circumstances, I make the following order:

Order

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa

² See *Martin and East (Pty) Limited v National Union Mineworkers and Others* (2014) 35 ILJ 2399 (LAC).