

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 165/17

In the matter between:

SECURITAS SPECIALISED SERVICES (PTY) LTD

Applicant

and

SAMSON KABELANE

Respondent

Decided: In Chambers

Delivered: 12 June 2019

JUDGMENT – LEAVE TO APPEAL

MAHOSI J

- [1] This is an opposed application for leave to appeal against the whole judgment of this Honourable Court handed down on 29 March 2019 in terms of which the Court declared the respondent's dismissal to be automatically unfair in terms of section 187(1)(d) of the LRA and ordered the applicant to reinstate the applicant retrospectively from the date of dismissal without loss and benefits.
- [2] The applicant brought this application on the grounds that the Court erred in:
- 2.1 Finding that the dismissal of the applicant was due to him exercising his rights as a shop steward in terms of the Constitution and the LRA.
 - 2.2 Overlooking the fact that a shop steward possesses no right or authority to represent employees of another company at the CCMA or Bargaining Council.
 - 2.3 Failing to uphold the applicant's point *in limine* that the above Honourable Court lacks the jurisdiction to adjudicate the matter.
 - 2.4 Failing to find that the respondent was dismissed for misconduct.
- [3] In opposing this application, the respondent submits that there is no prospect that another court will set aside the decision of this Court.
- [4] The traditional 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.¹ In terms of section 166(1) of the Labour Relations Act (LRA),² 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

¹ 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.

² Act 66 of 1995 as amended.

judgment or final order of the Labour Court. Section 17 of the Superior Court Act,³ which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

'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.'

[5] Section 16(2)(a) of the Superior Court Act provides as follows:

- '(i) When at the hearing of the appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.
- (ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

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

³ Act 10 of 2013.

⁴ (2014) 35 ILJ 2399 (LAC) at 2405-2406.

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

‘...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.

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.’

- [7] Having had regard to the applicant’s submissions, 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 must be dismissed.
- [8] With regard to costs, taking into account the requirements of law and equity, I am of the view that this is a matter in which there should be no order as to costs.
- [9] Accordingly, I make the following order:

Order

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

D. Mahosi

Judge of the Labour Court of South Africa

LABOUR COURT