

**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case No: J3723-18

In the matter between:

**KIMBERLEY EKAPA MINING JOINT VENTURE**

**Applicant**

And

**NATIONAL UNION OF MINeworkERS**

**Respondent**

**Considered: In Chambers**

**Delivered: 01 August 2019**

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**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

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**PHEHANE, AJ**

- [1] The applicant seeks leave to appeal the judgement and order of this Court delivered on 15 May 2019. The applicant raised a number of grounds for leave to appeal.

[2] I have once more, considered my judgment and the written submissions of both parties filed in this application. I have taken into account all the grounds of appeal that have been raised by the applicant, in particular, that the Court erred in:

- 2.1 making a finding on the selection criteria;
- 2.2 finding that there was no *bona fide* dispute of fact on the papers regarding the consultation on the selection criteria and the withdrawal of the respondent from the consultation process;
- 2.3 finding that the dismissal of the employees was procedurally unfair; and
- 2.4 granting reinstatement of the dismissed employees.

[3] I am persuaded that there exists a likelihood that another Court, presented with the same facts, would come to a different conclusion.

[4] In the premises the following order is made:

Order:

1. The application for leave to appeal is granted;
2. Costs will be costs in the appeal.

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MTM Phehane  
Acting Judge of the Labour Court of South Africa