

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2324/15

In the matter between:

MOSES KOTANE LOCAL MUNICIPALITY

Applicant

And

OBADIA MOKONYAMA N.O

First Respondent

TSHOLOFELO MOLOI

Second Respondent

Decided: In Chambers

Delivered: 14 August 2019

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

HUTCHINSON, AJ

Introduction

[1] The Second Respondent seeks leave to appeal against the judgment, handed down on 8 February 2018, in terms of which I reviewed and set aside the sanction imposed by the First Respondent.

[2] The Court was subsequently informed that after launching the application for leave to appeal, the Second Respondent referred an alleged unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) and further that the matter was arbitrated by Commissioner Hambidge. In light of this information, the Court assumed that the Second Respondent had abandoned her appeal.

[3] On 14 July 2019, I was referred to a letter that was written to the Court by the Second Respondent dated 28 November 2018. The letter reads in part as follows:

‘4. I have perused the court file and found a note alleging that I have approached the CCMA and there was no need for the Honourable Judge to deal with my matter. That allegation is not true and is misleading. The Leave to Appeal Application lodged still stand, it has not been withdrawn and it must be dealt with.

5. I request that my Leave to Appeal Application be referred to the Honourable Judge for it to be considered and finalization.’

Grounds of Appeal

[4] The applicant contends that the approach adopted by the Court in reviewing the findings of the First Respondent was akin to an appeal and not a review. The clear and convincing standard of proof is inapplicable to review

applications. The proper approach is set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*.¹

- [5] Further, she contends that the appeal involves an important question of law namely, what standards of proof apply and that the matter is of public interest.

Evaluation

- [6] Having regard to the Second Respondent's submissions, I am not persuaded that there are reasonable prospects of a successful appeal. The evidence adduced against the Second Respondent demonstrated a high probability that she was guilty of unethical conduct and that the sanction of dismissal was justified. The findings of the chairperson of the disciplinary enquiry to the contrary, were unreasonable and irrational. As such, I am of the view that this application is without merit and must be dismissed.

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

Order

1. The application for leave to appeal is dismissed.

Hutchinson AJ

Acting Judge of the Labour Court of South Africa

¹ [2007] 12 BLLR 1097 (CC).