

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR772/17

In the matter between:

NUMSA obo Malema & 42 Others

Applicant

and

Scaw Metals (Pty) Ltd

First Respondent

**Metal and Engineering Industries Bargaining
Council**

Second Respondent

Karen Kleinot NO

Third Respondent

Heard: In Chambers

Delivered: 05 November 2019

Summary: Application for leave to appeal – Application dismissed.

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI AJ

1. The applicants seek leave to appeal the judgement and order by the Court. The first respondent opposes the application.

2. The applicants rely on the following grounds for their relief:
 - 2.1. That the Court erred in fact and in law in not taking into account that the law requires the commissioner both to identify the issue of inconsistency and to decide that issue, taking into account that the applicants raised the issue of consistency in their evidence.
 - 2.2. That the Court erred in fact and in law in not taking into account that the commissioner failed to consider the issue of appropriateness of sanction given evidence before the commissioner.
 - 2.3. That the Court erred in fact and in law that the Court was not persuaded by the applicants' complaint on the issue of sanction, given evidence by the applicants in the form of transcribed records that was presented to the court.
3. The applicants' submissions in support of the application for leave to appeal did not address the grounds referred to in paragraphs 2.2 to 2.3. This is apart from the fact that these grounds are not supported by the record.

4. The applicants submit that the commissioner identified the issue of consistency but failed to determine that issue, with the result that the commissioner failed to execute her duties; rendering the award unlawful.
5. The submission lacks merit and ignores the totality of the award, including findings by the commissioner in paragraph 72 of the award.
6. The applicants also submitted that leave to appeal ought to be granted because the Court did not take into account that the applicants complained that the commissioner didn't consider their personal circumstances once the commissioner found them guilty.
7. The submission is not faithful to the award. The commissioner addressed the point in the award; including remarking that the applicants lacked remorse.
8. Appeals are not to be granted lightly. Appeals are to be limited to matters such as where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.¹
9. I am not persuaded that leave to appeal ought to be granted.

¹ Martin and East (Pty) Ltd v NUM (2014) 35 ILJ 2399 (LAC); Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others (2016) 37 ILJ 1485 (LC)

10. I make the following order:

10.1. The application for leave to appeal is dismissed.

10.2. There is no order as to costs.

Omphemetse Mooki

Judge of the Labour Court (Acting)

LABOUR COURT