

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 1062/15

In the matter between:

SYLVIA MAKOKOROPA

Applicant

and

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

First Respondent

MPHO BRENDAH MABIDI N.O.

Second Respondent

COMPASS GROUP

Third Respondent

Decided: In Chambers

Delivered: 29 November 2019

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

MAHOSI. J

[1] This is an opposed application for leave to appeal against the whole *ex-tempore* judgment of this Court handed down on 14 November 2018 in terms of which the Court dismissed the applicant's review application with no order as to costs.

[2] The applicant brought this application on the grounds that the Court erred in:

- 2.1 Finding that the applicant filed an incomplete record of the proceedings. According to the applicant, the Court ought to have found that the record before the Court was sufficient for deciding the matter.
 - 2.2 Failing to give the applicant a fair hearing as required by section 34 of the Constitution.
 - 2.3 Failing to interfere with the sanction imposed by the third respondent.
 - 2.4 Failing to find that the employer relied on hearsay evidence at the disciplinary hearing.
 - 2.5 Failing to find that the arbitrator was supposed to approach the evidence of a single witness, who was also an accomplice with caution.
- [3] In opposing, the third respondent submits that it raised the issue of the incomplete record in 2015 when they filed their answering affidavit, but the applicant failed to offer a reason or an explanation as to why a proper record was not discovered in terms of Rule 7A(6) of the Rules of the Labour Court. The respondent further submits that the application is lacking in substance and has no reasonable prospects of success.
- [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 judgment or final order of the Labour Court. Section 17 of the Superior Courts Act,³ which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

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.

³ Act 10 of 2013.

'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 Courts 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 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

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

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 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