

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2601/17

In the matter between:

MBONGENI ERNEST NGCOBO

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

MAPUTLE MOHLALA

Second Respondent

BIDVEST PROTEA COIN (PTY) LTD

Third Respondent

Considered: In Chambers

Delivered: 18 October 2019

JUDGEMENT: APPLICATION FOR LEAVE TO APPEAL

NTSHEBE, AJ

- [1] The applicant seeks an application for leave to appeal the whole judgment handed down by the Court on 22 May 2019 wherein, the arbitration award issued by the arbitrator was reviewed and set aside.

- [2] There are several grounds of leave to appeal. I have considered them, however, I will not deal with all of them in this judgement. One of the grounds of appeal is that the Court ignored evidence of the third respondent's witness, Mr Van Eeden, who testified that he did not give the applicant time to consult with him because his contract does not make provision for it. There is no merit in this ground of appeal. It is clear from the record that the applicant was given an opportunity to consult his attorney regarding the form and he was given such an opportunity.
- [3] Another ground of appeal is that the Court erred when it concluded that the arbitrator ignored the evidence of the third respondent's main witness who testified that the examiner could not conduct the polygraph test without the consent form being signed as it is a prerequisite. The evidence was clear that for the examiner to conduct the polygraph test, a consent form is a requirement. This consent form cannot be equated with consent in terms of the employment contract. There is no merit to the grounds of appeal.
- [4] I am not convinced that there are reasonable prospects that another court might arrive at a different decision.
- [5] In the premise the following order is made:

Order

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

T. Ntshebe
Acting Judge of the Labour Court of South Africa