

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: J 1824/19

In the matter between:

MORGAN LESESE

Applicant

And

ESKOM HOLDINGS LTD

First respondent

PIET NKUNA

Second respondent

Delivered: 28 November 2019

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

[1] This is an application for leave to appeal against the whole of the judgment delivered by this court on 3 September 2019, when the court struck an application filed by the applicant from the roll for lack of urgency, and ordered the applicant to pay 50% of the respondent's costs.

[2] The test to be applied is set out in s 17 of the Superior Courts Act, 10 of 2013. Leave to appeal may only be given if there is a reasonable prospect of success

or there is some other compelling reason why the appeal should be heard. In this court, it has been emphasised that the test is not to be applied lightly; indeed, the LAC has urged this court to be 'cautious' when leave to appeal is granted (see *Seathlolo & others v Chemical Energy Paper and Wood & Allied Workers Union and others* (2016) 37 ILJ 1485 and *Martin & East v NUM* (2014) 35 ILJ 2399 (LAC)).

- [3] The applicant submits that the court erred in finding that the applicant was seeking an order to interdict his disciplinary hearing, and that the application was an abuse of court process, that the urgent application had a connection with the applicant's prior referral involving an alleged protected disclosure, that the court erred in finding that the applicant was suspended on 26 June 2019 and 27 June 2019, and in ordering that the applicant to pay 50% of the respondent's costs.
- [4] All of these grounds but the last can be disposed of on the basis that the nature of the order granted by the court on was one in terms of which the application was struck from the roll. It is trite that an order of striking a matter from the roll for want of urgency is not a final order, and is not appealable.
- [5] Insofar as the applicant seeks leave to appeal against the order for costs, it must necessarily be borne in mind that s 162 of the LRA confers a broad discretion on the court to make orders for costs according to the requirement of the law and fairness. It is also trite that an appeal court will ordinarily be reluctant to interfere with the exercise of a discretion by the trial court. The factors to be taken into account by the trial court extended to the conduct of the parties in proceedings before the court, and during those proceedings. The balance to be struck is one that seeks not unduly to discourage workers from approaching this court to have their disputes dealt with, and avoiding the urgent role becoming clogged with frivolous disputes that should not be brought to Court. In the present instance, the applicant had already been warned by Whitcher J in a previous application brought some two months before the urgent application that is the subject of these proceedings. That warning extended particularly to the consequence of filing urgent applications that were not urgent and were devoid of merit. Despite

this warning, the applicant launched yet another urgent application, with no grounds for urgency and with no merit. In the circumstances, an order that the applicant pay 50% of the respondent's costs strikes the balance that is necessary in matters of this nature and in my view, there is no reasonable prospect that another court will come to a different conclusion. For these reasons, leave to appeal stands to be refused.

I make the following order:

1. The application for leave to appeal is dismissed.

André van Niekerk
Judge