THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2255/16

In the matter between:

IMATU OBO SANMARI BRIEDENHANN **Applicant**

And

EKURHULENI METROPOLITAN MUNICIPALITY **First Respondent**

TDK MATEE *N.O.* **Second Respondent**

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL **Third Respondent**

Decided: In chambers

Delivered: 18 April 2019

JUDGEMENT: LEAVE TO APPEAL

NKUTHA-NKONTWANA. J

Introduction

[1] In this application, the first respondent seeks leave to appeal against the whole judgment and order handed down by this Court on 10 May 2018 wherein I ordered as follows:

> '1. The arbitration award dated 21 September 2016 issued under case number GPD051603 is reviewed, set aside and substituted with the following order:
>
> 1.1 The conduct of Ekurhuleni Metropolitan Municipality in refusing to uplift Ms Briendenhann's precautionary suspension constitutes an unfair labour practice in terms of section 186(2)(b) of the LRA.
>
> 1.2 Ekurhuleni Metropolitan Municipality to permit Ms Briendenhann to resume her duties as Divisional Head: Projects in the Disaster and Emergency Management Services Department within 5 days from the date of this order.
>
> 1.3 Ekurhuleni Metropolitan Municipality to pay Ms Briendenhann compensation equivalent to nine months' remuneration within 30 days from the date of this order.
>
> 2. There is no order as costs.'

[2] The applicant is vigorously opposing the application. For expediency, the parties are referred to as cited in the main judgment.

Grounds of leave to appeal

[3] The first respondent's application is hinged on several grounds for leave to appeal and I do not deem it necessary to repeat them herein. Nonetheless, the

gist of the first respondent's impugn is that since the unfair labour practice dispute was founded on suspension that had already automatically expired in terms of the applicant's contract of employment, there was no suspension at all. Alternatively, that the suspension complained of was a subject of review before this Court.

[4] The third respondent persist with its irrational contention that Ms Briendenhann was no longer on suspension despite its concession that she was never allowed to resume with her duties. Nothing turns on the review application challenging the Dawson award as the applicant was challenging the legality of Ms Briendenhann's suspension. In any event, the suspension was still within the 90-days' period when that dispute was referred. However, the outcome of the review application challenging the Dawson award is patently moot as the suspension has since expired.

[5] The third respondent's stance in obstinately refusing to allow Ms Briendenhann to resume her duties can only mean that her suspension persists and nothing else.

Legal principles

[6] It is trite that the applicable test in an application for leave to appeal requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgement that is sought to be taken on appeal. However, the Labour Appeal Court (LAC) has cautioned this Court that the test ought not be applied unconscientiously in light of the statutory imperative of expeditious resolution of labour disputes. In *Martin and East (Pty) Limited v National Union Mineworkers and Others, per Davis JA, LAC* commented 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 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.' (Emphasis added)

[7] Having considered all the submissions from both parties, I am not persuaded that there is a reasonable prospect that the factual matrix in this case might receive a different treatment at the appeal. Put differently, the third respondent has failed to make out a case that another court might reasonably arrive at a decision different to the one reached by this Court. The application for leave to appeal should, therefore, be refused.

[8] Turning to the issue of costs, is trite that in this Court costs do not follow the result, especially if the parties are in a persisting relationship as typified in the present case. However, this unmeritorious application clearly offends the right of Ms Briendenhann to enjoy the fruits of her victory.

[9] In the circumstances, I make the following order:

Order

1. The application for leave to appeal is dismissed with costs.

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P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa