

**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: JS 794/03

In the matter between:

**NATIONAL UNION OF METALWORKERS OF  
SOUTH AFRICA (NUMSA) OBO MOSES**

**FOHLISA  
Applicant**

**&**

**41**

**OTHERS**

And

**HENDOR MINING SUPPLIES A DIVISION OF  
MARSCHALK BELEGGINGS (PTY) LTD**

**Respondent**

**Considered: In chambers**

**Delivered : 10 April 2019**

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**JUDGEMENT: LEAVE TO APPEAL**

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**CELE. J**

- [1] On 25 February 2019 I issued a leave to appeal judgment in this matter while sitting in chambers. As correctly endorsed in that judgment I did not have the benefit of submissions made by the respondents in this matter. I had consulted with my Johannesburg based secretary on whether the application for leave to appeal was opposed. I was informed that no opposing papers had been received, notwithstanding the waiting period given for the same.
- [2] I have since learnt that opposing papers were filed in time even though they were not passed on to my secretary. Had I known that opposing papers were filed in time with the office of the Registrar but that they were delayed in transit, I would not have finalised this application without these papers. The application for leave to appeal the judgment is consequently an order erroneously granted in the absence of the respondent party that was affected by this judgment and its order. The leave to appeal judgment I issued on 25 February 2019 in this matter accordingly falls to be rescinded.
- [3] Extensive submissions have been made by the respondent in this application to oppose the application for leave to appeal for my consideration. These submissions include a cross appeal, *albeit* on limited grounds pertaining to the applicability of the *in duplum* rule. The submission that the Constitutional Court order is capable of two interpretations, one proffered by the applicant and the other coming from the respondent, is beyond doubt. In the assailed judgment, the respondent's interpretation was found to accord with the context of the facts of this matter. There are reasonable prospects that the Labour Appeal Court will agree with the interpretation of the applicant, in which case leave to appeal should be granted. In that eventuality the cross appeal should similarly be granted.
- [4] In the premises the following order is made:

Order

1. The leave to appeal judgment dated 25 February in this matter is rescinded.
2. The application for leave to appeal is granted on the outlined grounds of appeal.
3. The cross appeal is granted on the limited ground averred by the respondent.
4. Costs of this application shall be costs in the appeal.

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H. Cele

Judge of the Labour Court of South Africa