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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS597/21

In the matter between

A.K

Applicant

and

RIGHT TO CARE NPC

Respondent

Decided: In Chambers

Delivered: 07 July 2023

JUDGMENT: LEAVE TO APPEAL

NKUTHA-NKONTWANA, J

[1] This is an application for leave to appeal the judgment and order of this Court handed down on 5 June 2023, on several grounds that are articulated in the notice of the application for leave to appeal. The respondent is opposing the application for leave to appeal.

[2] The applicant impugns the judgment on the following four grounds. Firstly, that I erred in finding that the process undertaken by the respondent dealt with the applicant's complaint expeditiously. Secondly, that I erred in finding that the respondent took three months to deal with the applicant's grievance.

- 2.1. The applicant obviously, misconstrued the nature of the inquiry and she regrettably persisted with these contentions in this application.
- 2.2. What is clear from the evidence is that as soon as the formal grievance was filed, the respondent commenced with the process of investigation, which included confronting the perpetrator with the allegations and subsequent disciplinary enquiry.
- 2.3. The perpetrator was accordingly dismissed with the help of the applicant as a main witness and in line with the respondent's Sexual Harassment Code.
- 2.4. The applicant is patently fixated on the ill-conceived impugn that there was no investigation report filed and no grievance hearing was held.
- [3] When it comes to the third and fourth grounds, the impugn is that I erred in finding that the respondent cannot be faulted for using the polygraph test to investigate the complaint; and that the polygraph test was applied fairly.
- 3.1. The applicant is yet to point me to a decision that prohibits use of polygraph test when dealing with sexual harassment.
- 3.2. Nonetheless, the polygraph test played a major role in assisting the respondent to choose a process that was most effective and yielded the result of eliminating sexual harassment by dismissing the perpetrator.
- 3.3. Notably, the applicant consented to taking the polygraph test and passed with flying colours. It was not the applicant's contention that she was prejudiced by the polygraph test when it was taken.
- [4] It is well accepted that for the leave to appeal to be granted, the applicant should in essence show that appeal would have a reasonable prospect of success. In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*¹, the Court described 'reasonable prospects of success' as follows:

¹ [2016] JOL 36940 (SCA) at paras 16 – 17; [2016] ZASCA 176. *Smith v S* [2011] JOL 26908 (SCA) at para 7; *Greenwood v S* [2015] JOL 33082 (SCA) at para 4; *Kruger v S* [2014] JOL 31809 (SCA) at para 2; *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re:*

[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.'

[5] In labour matters, there is another consideration, which is the statutory obligation that disputes must be resolved expeditiously.²

[6] I have holistically assessed all the grounds of appeal and I am persuaded that there are no prospects that another court would reasonably arrive at a decision different to the one reached by this Court. Yet, I am disinclined to award costs against the applicant.

[7] In the circumstances, the application for leave to appeal is dismissed with no order as to costs.

P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa

Democratic Alliance v Acting National Director of Public Prosecutions and Others [2016] ZAGPPHC 489.

² *Martin and East (Pty) Ltd v NUM and Others* (2014) 35 ILJ 2399 (LAC); [2013] ZALAC 35. *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others* (2016) 37 ILJ 1485 (LAC) at para 3; [2016] ZALCJHB 72.