

DELETE WHICHEVER IS NOT APPLICABLE

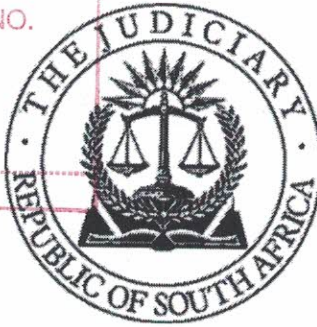
- (1) REPORTABLE: ~~YES~~/NO.  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.  
(3) REVISED.

23 June 2023

DATE

*LP1*

SIGNATURE



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 444/20

EMMANUEL MHLONGO

Applicant

and

COMMISSIONER JOHNNY MATHEBULA N.O

First Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second respondent

CLOVER SA (PTY) LTD

Third Respondent

Heard: In chambers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 23 June 2023.

---

JUDGMENT

---

MAHOSI, J

### Introduction

- [1] The applicant brought an unopposed application for leave to appeal against the whole judgment of this Court handed down on 16 August 2022, in which the Court dismissed the condonation application with no order as to costs.
- [2] The third respondent has filed a notice to abide by the decision of this Court.

### Grounds for leave to appeal

- [3] The applicant's submissions were that the Court erred in refusing to grant his condonation application as the two months delay was not excessive and was caused by him seeking funds to pay for the transcription of the record of the arbitration proceedings as per the Court Rules<sup>1</sup>.
- [4] It was the applicant's further submission that the Court erred in dismissing his case in the manner it did, mainly because, as a Court of justice and fairness, it had to show sympathy to him as he had 24 years of service with the third respondent without any bad records or written warning and was loyal to the management, doing his job correctly as per his supervisor's instruction.
- [5] Furthermore, the applicant submitted that to the extent that the third respondent did not oppose the review application or raise any point *in limine* even after filing the notice in terms of Rule 7A(6), it should have been a clear indication that it was aware that the latter unfairly terminated his employment contract.
- [6] According to the applicant, he has a reasonable prospect of success in that he did not commit any misconduct since the third respondent employed him, and the Court should grant this application to enable both parties to proceed with this matter before the Labour Appeal Court (LAC), which might come to a different finding to ensure that there is justice.

---

<sup>1</sup> GN 1665 of 1996: Rules for the conduct of proceedings in the Labour Court.

### Applicable law and analysis

- [7] In determining whether to grant an application for leave to appeal, the traditional test is whether there is a reasonable prospect that another court may come to a different conclusion.<sup>2</sup>
- [8] Section 166(1) of the Labour Relations Act (LRA)<sup>3</sup> provides that a party to proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the LAC against any final judgment or final order of the Labour Court.
- [9] Section 17 of the Superior Courts Act,<sup>4</sup> which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:
- ‘Leave to appeal may only be given where the judge or judges are of the opinion that–
- (a) (i) the appeal would have a reasonable prospect of success; or
  - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
  - (b) the decisions sought on appeal do not fall within the ambit of section 16(2)(a); and
  - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issue between the parties.’
- [10] Section 16(2)(a) of the Superior Court Act provides as follows:

<sup>2</sup> See *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and others* (1999) 20 ILJ 2889 (LC) at 2890B; *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC) at para 2 and *Tsotetsi v Stallion Security (Pty) Ltd* (2009) 30 ILJ 2802 (LC) at para 14.

<sup>3</sup> Act 66 of 1995, as amended.

<sup>4</sup> Act 10 of 2013, as amended.



- '(i) When at the hearing of an appeal, the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
- (ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

^ [11] In *Martin and East (Pty) Ltd v National Union of Mineworkers and others*,<sup>5</sup> the LAC made it clear that leave to appeal is not simply there for the taking and that this Court must be cautious in granting leave to appeal and in assessing the requirement of the prospect of success. In this case, the Court stated 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 the appellant, 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

---

<sup>5</sup> (2014) 35 ILJ 2399 (LAC) 2405I – 2406E.

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.'

- [12] Having had regard to the applicant's submissions, I am not confident that there are reasonable prospects of a successful appeal. As such, this application is without merit and must be dismissed.

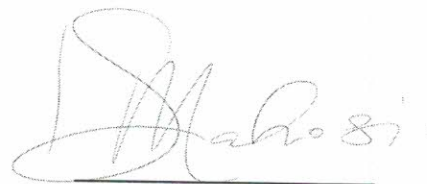
Costs

- [13] Regarding costs, the requirements of law and fairness dictate that there should be no order as to costs.

- [14] Accordingly, the following order is made:

Order

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



D. Mahosi

Judge of the Labour Court of South Africa