

SOUTH AFRICA / JUDGMENT

Amalungelo Workers Union obo Its Members and Others v Guardian Employers' Organization (GEO) and Others (J1430/2019) [2022] ZALCJHB 261 (26 September 2022)

[2022] ZALCJHB 261

COURT

Labour Court Johannesburg

BEFORE

Tilly

CASE / FILE NUMBER

J1430/2019

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J1430/2019

In the matter between:

AMALUNGELO WORKERS UNION OBO

ITS MEMBERS (cited in annexure “A” hereto)

First Applicant

MASHININI VUSUMUZI AND 23 OTHERS

(cited in annexure “A” hereto)

Second – Further Applicants

and

GUARDIAN EMPLOYERS’ ORGANIZATION (GEO) First Respondent

CARLBANK MINING CONTRACTS (PTY) LTD

Second Respondent

GLOBAL DYNAMIC INDUSTRIES

Third Respondent

RTT GROUP (PTY) LTD

Fourth Respondent

ROCASCENE (PTY) LTD

Fifth Respondent

RTT INTELLIGENCE LOGISTICS

Sixth Respondent

Considered:

In Chambers

Date Delivered: 26 September 2022

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

TILLY, AJ

Introduction

- [1] The applicants seek leave to appeal against the whole judgment and order of this Court delivered on 23 July 2021. The application is opposed by the respondents.
- [2] The respondents submitted that the application for leave to appeal was filed late and accordingly should not be entertained. This is not accurate. The judgment was handed down on 23 July 2021. The 15 days as set out in rule 30(2) of the Rules for the Conduct of Proceedings in the Labour Court (the Rules) to file the application for leave to appeal expired on 16 August 2021. The application for leave to appeal was filed on 16 August 2021. It was timeously filed, albeit only came to my attention during August 2022.
- [3] Both parties filed submissions in respect of the application for leave to appeal. The applicants' submissions were filed outside of the ten days prescribed to do so in paragraph 15.2 of the Practice

Manual. They sought condonation for the late filing of same, which application was opposed by the respondents.

- [4] I have considered the application for condonation for the late filing of the applicants' submissions, and the answering affidavit thereto. I am satisfied that a case for condonation has been made

out. In this regard, the delay of 39 days is not inordinate, there is a satisfactory explanation for the delay and no prejudice would be suffered by the respondents should condonation be granted.

Condonation for the late filing of the applicants' submissions

is accordingly granted.

The application for leave for appeal

- [5] The applicants submit that that their application for leave to appeal ought to be granted as the appeal has reasonable prospects of success. They inter alia submit that the Court a quo erred in not having found that the respondents' allegations that the second to further applicants (the employees) were not

dismissed but were redeployed and refused such redeployment, to be far-fetched/clearly untenable that the Court a quo was justified in rejecting them merely on the papers.

Furthermore, that the Court a quo erred in not having found the respondents' denial to be a bare denial of the applicants' material averments which cannot be regarded as sufficient to defeat the applicants' right to secure relief in motion proceedings.

- [6] The applicants also submit that the Court a quo erred as it does not necessarily follow that because a dispute of fact is reasonably foreseeable that an application will always be dismissed with costs. Furthermore, that the Court a quo also erred in having not considered and granted the applicants' application as contained in the replying affidavit to refer the matter to evidence, without the institution of a substantive application to that effect. They contend that the Court a quo erred in not having exercised its discretion to refer the matter for oral evidence.
- [7] The respondents inter alia submit that the applicants failed to apply by way of a substantive application for their matter to be referred to evidence notwithstanding being aware of a factual dispute. They submit that the applicants have not accepted the existence of a factual dispute and asked for appropriate relief. Furthermore, that the Court a quo was correct in rejecting their approach and should again reject it as there are no prospects that another Court would come to a different conclusion regarding the dismissal of the application for reasons that the applicants wrongfully followed motion proceedings.
- [8] They also submit that the grounds for the application for leave to appeal not only confirms the disputes of facts on the papers but confirms the conclusion of the Court a quo that the applicants should never have pursued this matter by way of motion proceedings. The Court a quo's findings are consistent with the legal authorities relied upon by the parties, are soundly applied by the Court and the inferences drawn are consistent with the facts. They state that the applicants are not raising any new legal grounds but are simply rehashing what they argued at the hearing. Furthermore, that the applicants have not established any basis to justify on the facts the setting aside of the settlement agreement, or that the matter should have been referred to evidence rather than being dismissed. They submit that there are no prospects of success on appeal and the application for leave to appeal ought to be dismissed with costs.

The test for leave to appeal

[9] The test to determine whether to grant an application for leave to appeal to the Labour Appeal Court requires the Labour Court to determine whether there is a reasonable prospect that another Court may come to a different conclusion to that of the Court a quo.[1]

[10] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*,[2] this Court confirmed the test applicable in applications for leave to appeal and provided as follows:

‘The traditional formulation of the test that is applicable in an application such as the present 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 judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008)

[2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there

is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015)’.

Analysis

[11] When regard is had to the applicants’ grounds seeking leave to appeal, it is clear that they are essentially repeating the averments made in their application before the Court a quo and they are furthermore disagreeing with the conclusions reached, with propositions of alternative recourses that the Court a quo ought to have considered. The mere disagreement and the rehashing of submissions already made does not amount to a reasonable prospect of another Court coming to a different conclusion, as is required by the test in an application for leave to appeal. Moreover, the issues were considered and dealt with in the judgment and no purpose would be served in revisiting such aspects.

[12] There is also no merit to the applicants’ contentions that the Court a quo erred in not having considered the applicants’ “application” in the replying affidavit to refer the matter to evidence.

- [13] There was a clear history of disagreement prior to the institution of the application between the parties on whether the employees were dismissed or whether they were redeployed and refused such redeployment. The applicants must have foreseen that serious disputes of facts were bound to develop and that they should have brought the matter by way of action proceedings, rather than motion proceedings. They did not do so.
- [14] Moreover, even after the disputes of facts were pointed out in the answering affidavit, the applicants still did not take up the opportunity of acknowledging the disputed facts and instituting a substantive application seeking the referral of the matter to trial or oral evidence.
- [15] In their replying affidavit, they denied the respondents' submissions and maintained their position. They denied that there were any genuine or obvious factual disputes in the matter that could not be resolved on affidavit. They further set out that should the Court hold that the matter could not properly be decided on affidavit, then an order be made which will ensure a just and expeditious resolution, including an order directing that oral evidence be heard on specified issues with a view to resolving any dispute of fact.
- [16] The latter unfortunately did not suffice and does not constitute an application as contended by the applicants. The fact is that they failed to even acknowledge the disputed facts and they furthermore failed to bring a substantive application seeking to refer the matter to trial or to oral evidence on specified issues.
- [17] Having considered the grounds for appeal and the submissions made, and applying the applicable test, I am unconvinced that there exists any reasonable prospect that another Court could come to a different conclusion. For these reasons, the application for leave to appeal must fail.

[18] In the premises the following order is made:

Order

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

Tilly AJ

Acting Judge of the Labour Court of South Africa

- [1] See: *Woolworths Ltd v Matthews* (1999) 3 BLLR 288 (LC); *Karbochem Sasolburg SA (a division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC); *Singh and Others v Mondi Papers* (2000) 21 ILJ 966 (LC); *Glaxo Wellcome SA (Pty) Ltd v Mashaba and Others* (2000) 21 ILJ 1114 (LC); *Volkswagen SA (Pty) Ltd v Brand NO and Others* (2001) 22 ILJ 933 (LC); *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC); *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 ILJ 95 (CC).

[2]

(2016) 37 ILJ 1485 (LC) at para 3.

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Prepared on 13 October 2026 · Esheria