

SOUTH AFRICA / JUDGMENT

## AMCU obo Sibiya and Others v Shanduka Coal (Pty) Ltd, Graspan Colliery (JS649/13) [2017] ZALCJHB 249 (4 July 2017)

[2017] ZALCJHB 249

COURT

Labour Court Johannesburg

BEFORE

E Tlhotlholemaje

CASE / FILE NUMBER

JS649/13

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 649/13

In the matter between:

AMCU obo JOHN SIBIYA AND 151 OTHERS Applicant and SHANDUKA COAL (PTY) LTD,  
GRASPAN COLLIERY Respondent

Considered in chambers.

Delivered: 4 July 2017

### RULING:

APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J:

[1] Following upon trial proceedings, judgment in this matter was delivered on 25 April 2017. The order granted was as follows;

- i. 'The dismissal of the 60 individual applicants as identified in Annexure 'A' to the applicants' amended statement of claim was substantively fair, but procedurally unfair.
- ii. The respondent is ordered to pay to each of the individual applicants as identified in (i) above, compensation in the amount equivalent to two (2) months' salary calculated at the rate of their remuneration as at the date of their dismissal.

iii. There is no order as to costs.’

[2] The applicant has since filed an application for leave to appeal against that judgment and order. The respondent opposed the

application.

[3] The material facts of this case that gave rise to the current application are recorded in the judgment, and no purpose will be served in burdening this ruling with a repetition thereof.

[4] Central to the applicants’ application as correctly pointed out on behalf of the respondent is the contention that the Court did not properly deal with the evidence presented at trial or that it had erred in its factual evidential findings. The applicant further take issue with the relief granted and the fact that costs were not awarded in its favour.

[5] It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal[1]. As to what this test entails was addressed by the Supreme Court of Appeal in *S v Smith*[2] as follows;

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court

of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant

must convince this court on proper grounds that he has prospects of succeed on appeal and that those prospects are not remote but have realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success an appeal’

[6] In considering the current application, it is taken into account that that the Labour Appeal Court has directed that caution must be exercised by judges of this Court when seized with applications for leave to appeal. There is a further requirement that judges of this court must ensure that the matters that are sent to the Labour Appeal Court are limited to those in which there is a reasonable prospect that the facts could be treated differently and/or where there is some legitimate dispute on the law[3].

[7] I have carefully considered the grounds upon which leave to appeal is sought, and the submissions made by both parties in support of and in opposition to the application. I have further reflected upon my judgement and hold the firm view that the issues raised by the respondent in this application and grounds upon which leave to appeal is sought were adequately dealt with in that judgment. Furthermore, the respondent had also correctly pointed out that the applicant has not raised disputes in regard to the Court’s application of the law or the application of any legal principle.

[8] In regards to the issue of costs, it is trite that the provisions of section 162 of the LRA empowers this Court to make an award of costs upon a consideration of the requirements of law and fairness, and that the normal rule that costs follow the result is not automatically applicable in Labour Court proceedings.[4] This is even more apposite in this case where the applicant was partially successful.

[9] In the light of the above, I am of the view that there exist no sound or rational basis for the conclusion that there are reasonable

prospects that the Labour Appeal Court would on the facts or the law, come to a different conclusion.

[10] I have again had regard to the requirements of law and fairness, and notwithstanding the ill-considered nature of this application, I will refrain from awarding any cost order.

[11] In the premises, I make the following order:

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

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E Tlhotlhlalemaje

Judge of the Labour Court of South Africa

[1] See Superior Courts Act 10 of 2013: Section 17 (1):

(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 decision sought on appeal does 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 issues between the parties.”

(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 decision sought on appeal does not fall within the ambit of section 16(2)(a); and

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- (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 issues between the parties.”
- [2] 2012 (1) SACR 567 (SCA) (15 March 2011) at para 7
- [3] See also *Khena v Passenger Rail Agency of South Africa* (J2767/16) [2017] ZALCJHB 32 (1 February 2017) at para 4; *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC)
- [4] *Trevlyn Ball v Bambalela Bolts (Pty) Ltd* [ 2013]
- (9) BLLR 843 (LAC) at para [29]
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