

SOUTH AFRICA / JUDGMENT

Billion Group (Pty) Limited v Mosheshe and Others (JR607/2013) [2016] ZALCJHB 228 (4 July 2016)

[2016] ZALCJHB 228**COURT**

Labour Court Johannesburg

BEFORE

Olivier

CASE / FILE NUMBER

JR607/2013

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR607/2013

DATE: 4 JULY 2016

Not Reportable

In the matter between:

BILLION GROUP (PTY) LIMITED.....Applicant

And

MOTHUSI MOSHESHE.....First Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION.....Second Respondent

MOTLATSI PHALA N.O.....Third Respondent

Decided in chambers

Date: 4 July 2016

Summary: Application for leave to appeal. Test to be applied – reasonable prospect that another court could come to a different

decision than that of the court a quo. Leave to appeal on the first ground of appeal is refused. Leave to appeal on the second and third grounds of appeal granted. No order is made as to costs.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

OLIVIER, AJ

Introduction

- [1] This is an application for leave to appeal against the orders contained in paragraphs 47.2 and 47.3 of my written judgment delivered on 7 August 2015.
- [2] The parties herein are referred to in the same manner as they were in the review application.

Background

- [3] The main application was heard on 15 January 2015 and upon conclusion of proceedings, judgment was reserved. After careful consideration of the issues raised in the main application, the judgment was handed down on 7 August 2015.
- [4] The review application was granted for reasons outlined in the judgment and no order as to costs was made.
- [5] Only the Applicant has made submissions in support of this application for leave to appeal. The Court, therefore, deals with this application on an unopposed basis.
- [6] The Applicant is three days out of time with its application for leave to appeal. Therefore, it sought condonation for the late filing thereof, which is also not opposed.
- [7] The abridged reason advanced for the delay was that the attorney for the Applicant misdiarised his file. While this error is to be deprecated, the delay was not inordinate and there can be no prejudice to the respondents. In these circumstances, it would be unfair to visit the Applicant with the sins of the attorney. The application for condonation is therefore granted in the interest of justice.

Grounds of appeal

- [8] Paraphrased, the Applicant seeks leave to appeal to the Labour Appeal Court on the following grounds:
 - 8.1. The court erred in concluding that the Respondent's dismissal was procedurally unfair;
 - 8.2. The court erred in awarding compensation to the Respondent, alternatively erred in awarding the Respondent 2½ months compensation;
 - 8.3. The court erred in ordering that interest on the compensation awarded run from the date of hearing for the review application, namely 15 January 2015.

Test for leave to appeal

[9] In determining whether leave to appeal should be granted, the Labour Court is required to consider whether there is a reasonable prospect that another court could come to a different decision than that of the court a quo. The court in *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others*[1] sets out this test as follows:

‘I have understood that the test in deciding whether to grant leave to appeal is the traditional test. It requires a judge to ask whether there is a reasonable prospect that another court may come to a different conclusion.’

[10] The Applicant is, therefore, required to show that there is a reasonable prospect that another court could come to another conclusion.

Conclusion

[11] In considering the first ground of appeal alluded to in the application for leave to appeal and having regard to the record and the reasons set out in my judgment, I am of the opinion that the Applicant has not made out its case that another court may reasonably arrive at a different decision.

[12] In considering the second ground of appeal and the reasons put forward by the Applicant, I have formed the view that the Applicant may well have reasonable prospects that another Court on appeal could come to a different conclusion.

[13] In particular, the effect of the First Respondent's conduct in relation to the five complaints on the Applicant's business requires proper consideration in the interest of fairness.

[14] On this basis the following order is made:

I. Leave to appeal on the first ground is refused;

II. Leave to appeal on the second and third grounds is granted;

III. There is no order as to costs.

Olivier, AJ

Acting Judge of the Labour Court of South Africa

[1]

(1999) 20 ILJ 2889 (LC) at para 4.

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