

SOUTH AFRICA / JUDGMENT

Caldwell and Another v PPC Group Services (Pty) Ltd (JS 118/19; JS120/19) [2021] ZALCJHB 175 (23 July 2021)

[2021] ZALCJHB 175**COURT**

Labour Court Johannesburg

BEFORE

Tlhotlholemaje

CASE / FILE NUMBER

JS 118/19; JS120/19

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG****Not reportable****Case No: JS 118/19****Case No: JS120/19****In the matter between:**

NEIL
CALDWELL
First Applicant
CRAIG
WATERSON
Second Applicant
and
PPC
GROUP SERVICES (PTY) LTD
Respondent

Heard:

Considered in chambers

Delivered:

This judgment was handed down electronically by circulation to the parties' legal representatives by email, and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 23 July 2021 at 13:00

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] The First and Second Applicants' (The Applicants) claim of an alleged unfair dismissal based on the Respondent's operational requirements was dismissed with costs in a judgment and order delivered by this Court on 19 April 2021. The Applicants have since filed an application for leave to appeal against the judgment and order, which application is opposed the Respondent.
- [2] In seeking leave to appeal, the Applicants contend inter alia that the Court erroneously concluded that the applicants were barred in terms of section 189A of the Labour Relations Act (LRA)[1] from challenging the procedural fairness of the dismissal on account of the dismissal being a mass retrenchment. It is contended that this finding was not supported by the evidence which served before this Court since it was ultimately apparent that less than 20 individuals were affected by the restructuring process.
- [3] The applicants further contend that the Court erred in concluding that the dismissals were substantively fair. This was so in that no alternatives were considered; that their roles were extinguished prior to consultation process commencing; that no selection process or criteria were applied before their positions were extinguished, and further since they were denied the opportunity to consult prior to the decision to implement the restructuring.
- [4] It was submitted that the decision to restructure the operations of the Respondent was taken on 18 October 2017, but was ultimately implemented on 3 May 2018, which was approximately two months prior to the Applicants receiving the Notice in terms of section 189(3) of the LRA. In that respect thus, it was submitted that there could not have been meaningful consultations as contemplated in section 189 of the LRA, since the retrenchments were fait accompli.
- [5] The applicants further contend there was no evidence during the trial proceedings which demonstrated that there was a rationale for the retrenchment, since the rationale for the whole restructuring exercise was distinguishable, and ought to have been separated from the specific decision to declare their positions redundant.
- [6] The applicants further contend that the Court's conclusion to the effect that alternatives to dismissal were considered was not supported by any evidence, particularly since inter alia, it was apparent from the evidence before the Court that at the time of the dismissal of the First Applicant, the organisational structure of the sale and marketing department had not been concluded.

[7] Under the provisions of Section 17 of the Superior Court's Act[2], leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

These provisions have raised the threshold for granting leave to appeal against a judgment of the Court, as explained in *The Mont Chevaux Trust v Tina Goosen & 18 Others*[3] as follows;

'[6] It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable

prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

[8] In *S v Smith*[4], it was further held that;

'In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a 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 word, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[9] In opposing the application, the Respondent's contentions were that there was no merit in the grounds upon which the leave to appeal was sought, and I agree. In applying the above legal principles, and having reflected on my judgment and the submissions made in support of and in opposition to this application, I agree as submitted on behalf of the Respondent that the grounds advanced on behalf of the Applicants have not established a sound rational basis for a conclusion that there are prospects on appeal. These grounds do not raise any novel issue on the facts or the law, that deserves the attention of the Labour Appeal Court.

[10] I have further had regard to the requirements of law and fairness, and given the circumstances of this case, I am of the view that a costs order is not warranted.

[11] Accordingly, the following order is made;

Order:

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

Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

[1] Act 66 of 1995, as amended

[2] Act 10 of 2013

[3] 2014 JDR 2325 (LCC)

[4] 2012

(1) SACR 567 (SCA) at para 7

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2021/175.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/caldwell-and-another-v-ppc-unknown-topic-alcjhb-2021>

Prepared on 25 October 2026 · Esheria