

SOUTH AFRICA / JUDGMENT

Chetty v Nissan South Africa Limited (JR914/18) [2022] ZALCJHB 279 (6 October 2022) [2022] ZALCJHB 279

COURT

Labour Court Johannesburg

BEFORE

Mosam

CASE / FILE NUMBER

JR914/18

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IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Case Number: JR914/18

In the matter between –

VENOLAN ARUMAGAM CHETTY

Appellant/

First Respondent in review

and

NISSAN SOUTH AFRICA LIMITED

First Respondent/

Applicant in review

L NOWOSENETZ N O

Second Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Third Respondent

LEAVE TO APPEAL JUDGMENT

MOSAM, AJ

Introduction

1. This is an application for leave to appeal against the judgment and order handed down on 8 July 2022.

2 The grounds for leave to appeal are premised on the following:

2.1. This Court erred in law and in fact which resulted in its conclusion that the Third Respondent did not have jurisdiction as the referral was not made within 90 days of the act or omission.

2.2. That this Court misinterpreted section 191(1) by not taking into account material evidence that was accepted by the Second Respondent about the unfair continuous conduct of the First Respondent.

2.3. That this Court was bound by the decisions of the Labour Appeal Court (“LAC”), if not, was required to provide reasons why it differs.

3. The test to apply in an application for leave to appeal is governed by the provisions of section 17 of the Superior Courts Act, 10 of 2013 (“the Superior Courts Act”) which provides:

“1. Leave to appeal may only be given where the judge or judges concerned 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.”

4. The test envisaged in section 17 received attention in the unreported judgment of Bertelsmann J in *Mont Chevaux Trust (IT 2012/28) v Tina Goosen & 18 others LCC 14 R/2014* (3 November 2014) where it was said that:

“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 may come to a different conclusion, see Van Heerden v Cronwright & others 1995

(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 where judgment is sought to be appealed against.”

5. The issues raised by it are in my view fully dealt with in my judgment. I stand by the findings made in my judgment and find no reasons to believe that another Court, faced with the same facts, is likely to arrive at a decision different to that of this Court.

6. In amplification whilst our courts have accepted the concept of an unfair labour practice to be continuous our courts have cautioned it must be considered in instances of differentiation based on arbitrary behaviour by an employer. This is not the case in this dispute.
7. It is unlikely another court would conclude that an employee can refer a dispute several years after the first alleged unfair act by contending that the conduct is continuous. This would render the provisions of the LRA relating to speedy resolution of disputes nugatory.

Order

8. The application for leave to appeal is dismissed with costs.

A MOSAM SC

ACTING JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

6 October 2022

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