

SOUTH AFRICA / JUDGMENT

Ekurhuleni Metropolitan Municipality v South African Local Government Bargaining Council and Others (JR2368/15) [2017] ZALCJHB 475 (19 December 2017)

[2017] ZALCJHB 475

COURT

Labour Court Johannesburg

BEFORE

E Tlhotlhamajje

CASE / FILE NUMBER

JR2368/15

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2368/15

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY Applicant and SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL First Respondent ARBITRATOR M.N.S DAWSON N.O Second Respondent INDEPENDENT MUNICIPAL ALLIED TRADE UNION (IMATU) OBO SANMARI BRIEDENHANN Considered in Chambers. Third Respondent

Delivered: 19 December 2017

RULING:

LEAVE TO APPEAL

TLHOTLHALEMAJE, J:

Introduction

and background:

[1] Ekurhuleni Metropolitan Municipality (Municipality) brought an application before this Court to review and set aside an arbitration award issued by the second respondent, Commissioner M.N.S Dawson N.O, wherein the Municipality was found to have committed an unfair labour practice against the third respondent, Ms Sanmari Briedenhann

(Briedenhann). The finding by the Commissioner was premised on the view that Briedenhann was a senior manager in terms of provision of section 56 and 57 of the Local Government: Municipal Systems Act[1] and therefore ought to have been suspended in terms of the Municipal Systems Act and not in terms of provisions of the Disciplinary Procedure Code Collective Agreement.

[2] On 17 October 2017, this Court handed down judgement in terms of which the Commissioner's award was reviewed, set aside and substituted with an order that the precautionary suspension of Briedenhann did not constitute an unfair labour practice within the meaning of section 186(2)(b) of the Labour Relations Act.[2]

[3] Briedenhann has since filed an application for leave to appeal against that judgment. The Municipality opposed the application for leave to appeal. Briedenhann further seeks an order condoning the late filing of the notice of application for leave to appeal, and the late filing of the written submissions in support of the leave to appeal. She further seeks an amendment to the citation of the third respondent from "IMATU obo Sanmari Briedenhann" to "Sanmari Briedenhann" since IMATU no longer represents her. The Municipality filed a notice consenting to both the condonation application and the application to amend the citation.

[4] The late filing of application for leave to appeal and the written submissions in the light of the insignificant nature of the delay in that regard should be condoned. There is further no reason why the application to amend the citation should not be granted.

Application for leave to appeal:

[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[3]. As to what this test entails was addressed by the Supreme Court of Appeal in *S v Smith*[4] 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] Briedenhann advanced a number of grounds in support of her application for leave to appeal. I do not intend on regurgitating

them here, suffice to say 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 Briedenhann in this application and grounds upon which leave to appeal is sought were adequately dealt with in that judgment. Having had regard to the these considerations, it is my view that Briedenhann has not raised anything of significance that indicates a reasonable prospect of the Labour Appeal Court coming to a different conclusion to that arrived at in my judgment. Accordingly, the application for leave to appeal stands to be dismissed.

[7] In respect of costs, I have had regard to the requirement of law and fairness, I am of the view that a costs order is not warranted in this circumstances.

Order:

[8] In the premises, the following order:

1. The citation of the third respondent is amended from "IMATU obo Sanmari Briedenhann" to "Sanmari Briedenhann;
2. The late filing of the third respondent's notice of application for leave to appeal is condoned;
3. The late filing of the third respondent's written submissions in support of the application for leave to appeal is condoned;
4. The application for leave to appeal is dismissed;
5. There is no order as to costs.

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Judge of the Labour Court of South Africa

[1] Act 32 of 2000, as amended

[2] Act 66 of 1995, as amended

[3] 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.”

[3] 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.”

[4] 2012 (1) SACR 567 (SCA) (15 March 2011) at para 7

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