

SOUTH AFRICA / JUDGMENT

Ekurhuleni Metropolitan Municipality v Williams NO (JR155/21; JR1625/21) [2025] ZALCJHB 135 (13 March 2025) [2025] ZALCJHB 135

COURT

Labour Court Johannesburg

BEFORE

M Makhura

CASE / FILE NUMBER

JR1552/21; JR1625/21

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1552/21

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY Applicant

and

WILLIAMS, G.I. N.O.

First Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Second Respondent

ELIAS MZWANELE YAWA

Third Respondent

Case No: JR1625/21

In the matter between:

ELIAS MZWANELE YAWA

Applicant

BARGAINING COUNCIL

First Respondent

WILLIAMS, G.I. N.O.

Second Respondent

EKURHULENI METROPOLITAN MUNICIPALITY Third Respondent

Heard: In Chambers

Delivered: 13 March 2025

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

MAKHURA, J

[1] Mr Elias Mzwanele Yawa (applicant) applies for leave to appeal the judgment and order handed down on 28 November

2024. In that judgment, this Court dismissed the applicant's jurisdictional point, dismissed the application for consolidation, granted condonation and review applications in case number JR1552/21 brought by the Municipality, reviewed and set aside the award and remitted the unfair dismissal dispute for arbitration de novo. The Court dismissed the review application brought by the applicant under case number JR1625/21.

[2] Save for the decision to decision to dismiss the consolidation application, the applicant seeks leave to appeal the whole of the judgment and order. The Municipality opposes the application and seeks the dismissal of the application with costs.

[3] The test to determine applications for leave to appeal is set out under section 17 of the Superior Court Act (SC Act).[1] Section 17(1) provides that:

‘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 question therefore is whether the appeal would have a reasonable prospect of success or whether there are other compelling

reasons

that warrant the appeal being heard.

[5] I have considered the applicant's grounds upon which he seeks leave to appeal, his submissions and the Municipality's

submissions. The grounds for leave to appeal are a regurgitation of his opposition to the Municipality's application, the review grounds in his application and the submissions made during the hearing of the matter. These issues have been addressed in the main

judgment.

[6] The commissioner acted outside the terms of reference or the pre-arbitration minute which identified the issues he was called upon to determine. This is sufficient to vitiate the award and to order a re-trial of the issues. In addition, the basis upon which the commissioner found that the applicant was dismissed is incoherent. No amount of fair and generous reading could save this award from being reviewed and set aside.

[7] Having considered the application for leave to appeal and reflected on the main judgment, I am not persuaded that the application satisfied the leave to appeal threshold that the appeal would have a reasonable prospect of success. Further, the matter does not present any arguable point of law. Therefore, there are no other compelling reasons for the Labour Appeal Court to be burdened with this matter. The application for leave to appeal stands to be dismissed.

[8] In the premises, the following order is made:

Order:

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

M. Makhura

Judge of the Labour Court of South Africa

[1] Act 10 of 2013.

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