

SOUTH AFRICA / JUDGMENT

**FAWU obo Members v Imperial Logistics
(Pty) Ltd and Others (Application for
Leave to Appeal) (JR62/20) [2024]
ZALCJHB 465 (22 November 2024)
[2024] ZALCJHB 465**

COURT

Labour Court Johannesburg

BEFORE

G Mafa-Chali

CASE / FILE NUMBER

JR62/20

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR62/20

In the matter between:

FAWU OBO MEMBERS Applicant and IMPERIAL LOGISTICS (PTY) LTD First Respondent
ELEANOR HAMBIDGE N. O Second Respondent THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION Third Respondent

Heard: In chambers

Delivered: 22 November 2024

JUDGMENT- APPLICATION FOR LEAVE TO APPEAL

MAFA-CHALI, AJ

Introduction:

- [1] I handed out my judgement in this matter on 3 September 2024 in favour of the First Respondent.
- [2] The Applicant filed its application for leave to appeal with the First Respondent's attorneys on 22 September 2024

electronically by email, and filed same with the Court on 23 September 2024. The First Respondent's attorneys confirmed receipt of the application on 23 September 2024 according to the email confirmation from Mr Ruben Orton of Snyman Attorneys, representing the First Respondent and indicated that they do not intend to provide submissions to the application.

[3] The Applicant filed its submissions for application on 07 October 2024.

[4] The application for leave to appeal is not opposed by the First Respondent.

[5] I have considered the application for leave to appeal and the written representations by the Applicant in chambers.

Applicant's grounds of appeal:

[6] The application for leave to appeal sets out the various grounds of appeal and can be found in detail in the application for leave to appeal.

[7] The following are the grounds summarised as follows:

7.1 The Court erred when it failed to find that the correct interpretation of the relevant collective agreements was that Imperial was liable to pay FAWU's members severance pay equal to an amount of 2 (two) weeks' remuneration for each completed year of continuous service.

7.2 The Court failed to consider that the terms of the collective agreement are not only binding on the individual employees but as a matter of law are incorporated into the employees' contracts of employment, and they remain in force even after the lapse of the collective agreement until another collective agreement was concluded changing those provisions incorporated into individual contracts.

7.3 The Court erred in failing to consider that there is no provision in the collective agreements which provides for the automatic lapsing of the terms incorporated in the employment contracts on the expiry of the collective agreements.

7.4 The Court erred in concluding that there was no ambiguity in the various collective agreements and no disputes of fact, and therefore there is no need for the Commissioner to call for oral or extrinsic evidence.

7.5 The Court wrongly concluded that Mr Orton's evidence was not hearsay evidence because he was merely making submissions on behalf of the First Respondent to argue on how the Commissioner should interpret the relevant collective agreements.

7.6 The Court erred in failing to consider that there were some collective agreements concluded during this period which the Applicant was not able to locate and which was also not made available by Imperial. This self-evidently indicated that oral or extrinsic evidence was required.

7.7 The Court erred in failing to consider that documentary evidence was handed to the Commissioner which confirmed that the parties had an existing agreement regarding severance pay.

7.8 The Court erred to apply the proper approach to the interpretation of collective agreements of the purpose and aim of the collective agreements, the objects of the LRA, the intention of the parties and the meaning of the provisions in the relevant collective agreements.

7.9 The Court erred in finding that the 2012 collective agreement was limited for the following 12 months, whilst the severance pay will remain at two weeks per completed year of service.

7.10 The Court further erred in failing to conclude that because after 2012, the issue of severance pay was not specifically dealt with in subsequent collective agreements, the agreement for the two (2) weeks' severance pay remained in force, without reviving any other collective agreement.

7.11 The Court erred in placing all emphasis on the provisions of section 23(2) of the LRA and ignoring the provisions of section 23(3) of the LRA.

7.12 The Court erred in finding that the Commissioner had no duty to lend a helping hand to Mr Kota or Mr Kota understood the issues, was properly able to articulate the Applicant's case and understood the proper approach to interpretation of collective agreements, or knew that he needed to lead oral evidence or call witnesses to testify.

7.13 The Court erred in finding that the fact that the First Respondent had a practice to pay severance pay after 2012, was immaterial to the interpretation of the relevant severance pay provisions.

Evaluation

[8] I do not intend to deal with each and every ground of appeal separately.

[9] Much of the grounds raised by the Applicant are grounds that were raised in the hearing of the matter which matters were addressed in the reasons for the judgment.

The test for leave to appeal:

[10] The provisions of section 17 of the Superior Courts Act[1] is the starting point in considering applications of this nature. These specifically provide that:

'17

(1) leave to appeal may only be given where a 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 consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and 3 2 Act 10 of 2013.

(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.'

[11] Central to the determination of applications for leave to appeal is whether there are reasonable prospects of success in the appeal. This test as outlined in section 17(1) of the Superior Court Act differs to the traditional test as previously stated by our courts. The provisions of section 17(1) raise the threshold of the test for leave to appeal.

[12] An applicant in an application for leave to appeal must therefore convince the court a quo that it has reasonable prospects of success on appeal. What the test requires is the reasonable likelihood that another court, presented with the same facts and evidence as this Court, could come to a different conclusion than the one arrived at by this Court.

[13] In *Seatlholo & others v Chemical Energy Paper Printing Wood and Allied Workers Union & others*[2], the Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

“The traditional formulation of the test that is applicable in an application such as the present requires the court to determine

whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different. Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted”.

[14] This Court and the Labour Appeal Court (LAC) have in the past stressed that leave to appeal should not be lightly granted because meritless appeals delay the final resolution of disputes.

[15] Reasonable prospects of success means that the applicant has to show that another Court, faced with the same material, could come to a different conclusion, or an appeal can succeed if there is a legitimate dispute of the law.

[16] Having had regard to the submissions made on behalf of the Applicant in respect of this application. It is my considered view that they do not meet the threshold referred to above.

[17] In casu, applying the principles applicable to applications for leave to appeal, I am not persuaded that there are reasonable prospects that the LAC would arrive at a different conclusion than the one arrived at by this Court. The Applicant failed to make out a case for leave to appeal to be granted.

- [18] In as much as the Applicant outlined its grounds for leave to appeal on its notice and proceeded to give some substantiations in its subsequent submissions, many of the submissions at best amount to a regurgitation of its case as in the review application. I am satisfied that those issues were adequately canvassed and dealt with in my judgment, and no purpose will be served in revisiting the same.
- [19] I am not persuaded that any appeal would have a reasonable prospect of success.
- [20] Furthermore, there are no other compelling reasons why leave to appeal should be granted.
- [21] In light of the above, and having had regard to the submissions made in regard to the application for leave to appeal, and further upon a reflection of my judgment, I am of the view that the Applicant has failed to demonstrate that there are reasonable prospects that the LAC will come to a different decision to that reached in my judgment.
- [22] There is no reason why a cost order should be made in this application.
- [23] In the premise, I make the following order:

Order:

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

G Mafa-Chali

Acting Judge of the Labour Court of South Africa

Representation:

For the Applicant: Considered in chambers

[1] Act 10 of 2013

[2]

(2016) 37 ILJ 1485 (LC)

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Prepared on 11 October 2026 · Esheria