

SOUTH AFRICA / JUDGMENT

Hartley v South African Social Security Agency (JR 1648/10 ; J 492/20)

[2023] ZALCJHB 193 (15 June 2023)

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COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

JR 1648/10 ; J 492/20

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 1648/10

J 492/20

In the matter between:

SURAYA HARTLEY Applicant and SOUTH AFRICAN SOCIAL SECURITY AGENCY Respondent

Decided: In Chambers

Judgment:

15 June 2023

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 15 June 2023.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J

[1] The Applicant applied for leave to appeal against part of the judgment, dismissing the section 158(1)(c) application, delivered on 1 March 2023.

[2] The Respondent opposed the application for leave to appeal.

The filing of

submissions

- [3] The Applicant filed a notice of application for leave to appeal on 17 March 2023.
- [4] The Applicant had to file her submissions in support of her application for leave to appeal within 10 days of filing the application for leave to appeal. No submissions were filed, nor was any application filed to condone the non-compliance with the provisions of the Practice Manual[1]. Instead, Mr Thompson, on behalf of the Applicant, filed a document on 10 May 2023 stating that the Applicant had no further submissions to make other than those contained in the application for leave to appeal.
- [5] The Respondent objected to the Applicant's non-compliance with the Rules of the Labour Court[2] (Rules) and the Practice Manual.
- [6] Rule 30(1) of the Rules provides that an application for leave to appeal may be made by way of a statement of the grounds for leave to appeal. Rule 30 (3A) provides that the parties must file submissions in respect of the application for leave to appeal.
- [7] Paragraph 15 of the Practice Manual of the Labour Court deals with applications for leave to appeal and provides as follows in paragraph 15.2:

‘Within 10 days of the filing of the application for leave to appeal, the party seeking leave must file its submissions in terms of Rule 30(3A) and the party opposing the leave must file its submissions five days thereafter. An application for leave to appeal will be decided by the judge in Chambers on the basis of the submissions filed in terms of Rule 30 (3A), unless the judge directs that the application be heard in open court.’

- [8] It is evident from the Rules and the Practice Manual that the statement of the grounds for leave to appeal is not the same as the submissions, that must be filed ten days later. The Practice Manual specifically provides that the application for leave to appeal will be decided by the judge in chambers on the basis of the submissions filed in terms of Rule 30 (3A).
- [9] This Court and the Labour Appeal Court (LAC) have considered the status of the Practice Manual[3] and held that in essence, the manual promotes uniformity and consistency in practice and procedure and sets guidelines on standards of conduct expected of those who practise and litigate in the Labour Court and it promotes the statutory imperative of expeditious dispute resolution. The provisions of the Practice Manual are binding and should be adhered to and it is not to be adhered to or ignored by parties at their convenience.
- [10] In *Ndebele v South African Police Service and Another*,[4] the Court was faced with an application for leave to appeal where neither party filed written submissions despite being directed to do so. The Court considered the provisions of clause 15.2 of the Practice Manual together with the judgment of *Ralo v Transnet Port Terminals and Others*[5] and held that –

[7] Considering that a Judge is entitled, in terms of the Practice Manual, to decide a leave to appeal application in chambers based on written submissions, the failure to file written submissions in these instances may be viewed to be similar to a party failing to appear in Court to argue the case, and all the consequences associated with it, which may include dismissing the application on this basis alone. But at the very least, this failure by the applicant leaves the leave to appeal application unmotivated.

[8] In my view, the applicant's failure to file written submissions despite the clear provisions of the Practice Manual and despite being called on to do so, should lead to the dismissal of the application for leave to appeal for this reason alone.'

[11] In *Mokoena v Member of Executive Council for Education: Gauteng and another*[6], the applicant, although had filed an application for leave to appeal, failed to file its written submission in accordance with Rule 30(3A) read together with paragraph 15.2 of the Practice Manual. The Court (per Tlhotlhamajie J) held that –

[3] In the absence of compliance with the provisions of rule 30(3A) of the Rules of this Court read with paragraph 15.2 of the Practice

Manual of this Court, the purported application for leave to appeal is not properly before the Court.

[4] Even if the Court was inclined to consider what is before it to the extent that the applicant sought leave to appeal, central to the applicant's complaints is that on the whole, Court's assessment of the factual matrix of the case was erroneous, and that the Court misdirected itself in various respects.

[5] Having had regard to the grounds upon which leave to appeal is sought, and further having reflected on the judgment and order of this Court, it ought to be found that the applicant has not set out a basis or any compelling reasons upon which it can be concluded that there are reasonable prospects that the appeal would succeed. It therefore follows that the application should fail.'

[12] It is not for Mr Thompson to tell this Court that he would not be filing submissions, notwithstanding the clear and binding provisions of the Rules and the Practice Manual. It is imperative for Mr Thompson, as a legal practitioner, to comply with the applicable provisions.

[13] I will however deal with the application for leave to appeal by the Applicant, who took the risk of filing an application, without submissions when the application for leave to appeal will be decided on the basis of the submissions filed in terms of Rule 30 (3A).

The test for leave to appeal

- [14] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act[7] (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the LAC against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.[8]
- [15] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion.
- [16] It is further trite that an applicant in an application for leave to appeal must convince the court a quo that it has reasonable prospects of success on appeal. Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.
- [17] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,[9] this 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 s 17(1)(a)(i) is 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 conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). 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. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015).’

- [18] In deciding this application for leave to appeal, I am also guided by the dicta of the Supreme Court of Appeal where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others*[10] that:

‘...The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.’

This application

[19] I have considered the application for leave to appeal and the Respondent’s submissions filed in opposition thereof and I do not intend to repeat the grounds for appeal or the submissions made in opposition thereof. It appears from the application for leave to appeal that the Applicant had raised 12 grounds for leave to appeal. Those grounds are intertwined and overlapping and are to a great extent confusing and not in keeping with what was presented in the section 158(1)(c) application. A version on an important aspect such as the tendering of the Applicant’s services, cannot be corrected on appeal, as the Applicant seeks to do.

[20] The Court has the discretion to make the arbitration award an order of Court and in casu, this Court exercised its discretion not to make the arbitration award an order of Court for the reasons fully dealt with in the

judgment.

[21] The LAC in *KM Lawrence v Mutual & Federal (Pty) Ltd and another*[11] held with the authority of *Protea Assurance Co Ltd v Matinise*[12] and *Minister of Prisons and another v Jongilanga*[13] that:

‘The general approach to be adopted by a court of appeal when considering an appeal against costs is trite. The award of costs and the scale thereof is a matter within the discretion of the court making the order.[14] The appeal court will not easily interfere with the exercise of that discretion. It can only interfere where the discretion was exercised on a wrong principle or was capriciously made.’[15]

[22] In *MEC for Environmental Affairs and Development Planning v Clairison’s CC*,[16] the Supreme Court of Appeal described the test that applies to the review of a discretion as follows:

‘[18] ...When the law entrusts a functionary with a discretion it means just that: the law gives recognition to the evaluation made by the functionary to whom the discretion is entrusted, and it is not open to a court to second-guess his evaluation. The role of a court is no more than to ensure that the decision-maker has performed the function with which he was entrusted.

...

[22] ...The law remains, as we see it, that when a functionary is entrusted with a discretion, the weight to be attached to particular factors, or how a particular factor affects the eventual determination of the issue, is a matter for the functionary to decide, and as he acts in good faith (and reasonably and rationally) a court of law cannot interfere.’

[23] When the exercising of a discretion is challenged, the test that the court (called upon to interfere with the discretion) will apply is to evaluate whether the decision maker acted capriciously, or upon the wrong principle, or with bias, or whether or not the discretion exercised was based on substantial reasons or whether or not the decision maker adopted an incorrect approach.

[24] Leave to appeal should not be lightly granted where the grounds for appeal relate to the exercising of the Court's discretion. The Applicant has not set out any grounds to show that this Court's discretion was not judicially exercised and as Mr Thompson failed to file any submissions, there is no basis or any compelling reasons submitted in support of this application upon which it can be concluded that there are reasonable

prospects that the appeal would succeed. Applying the applicable test, I am not convinced that the Applicant has made out a case for leave to appeal to be granted.

[25] There is also not a reasonable prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion.

Conclusion

[26] I have considered the grounds for leave to appeal and the submissions made in opposition of the grounds for appeal and applying the applicable test, I am not convinced that the Applicant has made out a case that passed the test and the high threshold of a reasonable prospect that another court would come to a different

conclusion.

[27] In the premises, I make the following order:

Order

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

Connie Prinsloo

Judge of the Labour Court of South Africa

[1] Practice Manual of the Labour Court of South Africa, effective 1 April 2013.

[2] GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

[3] *Ralo v Transnet Port Terminals and others* [2015] 12 BLLR 1239 (LC) (Ralo); *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and others* (2014) 35 ILJ 1672 (LC); *Samuels v Old Mutual Bank* [2017] 7 BLLR 681 (LAC) (Samuels).

[4] (JR2395/14) [2017] ZALCJHB 251 (4 July 2017).

[5] *Ralo supra* at para 9.

[6]

[2021] JOL 51394 (LC).

[7] Act 66 of 1995, as amended.

[8] See *Woolworths Limited v Matthews* [1999] 3 BLLR 288 (LC).

[9]

(2016) 37 ILJ 1485 (LC) at para 3.

[10] 2013 (6) SA 520 (SCA) at para 24.

[11] (JA77/2014) [2016] ZALAC 45 (15 September 2016) (Lawrence).

[12] 1978

(1) SA 963 (A) at 976H.

[13] 1985

(3) SA 117 (A) at 124B.

[15] Lawrence *supra* at para 35.

[16] 2013 (6) SA 235 (SCA) paras 18 and 20.

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