

SOUTH AFRICA / JUDGMENT

Hlongwane and Another v National Health and Allied Workers Union and Others (JR 1207/20) [2022] ZALCJHB 155 (15 June 2022)

[2022] ZALCJHB 155

COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

JR 1207/20

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR 1207/20

In the matter between:

THOKOZILE GRACE HLONGWANE

First Applicant

SYDWEL VUSI MASEKO

Second Applicant

and

THE NATIONAL HEALTH AND ALLIED

WORKERS UNION

First Respondent

COMFORT MAKOBANE N.O.

Second Respondent

SOLLY MASHEGO N.O

Third Respondent

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Fourth Respondent

Decided: In Chambers

Delivered: 15 June 2022

(In view of the measures implemented as a result of the Covid-19 outbreak, 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 2022).

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, J

- [1] The First Respondent applied for leave to appeal against the whole judgment handed down on 22 March 2022.
- [2] The application for leave to appeal is opposed by the Applicants.
- [3] Both parties have filed submissions in respect of the leave to appeal. I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

The test for leave to appeal

- [4] 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 (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. In order 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”[1].

- [5] The test is not whether or not there is a possibility that another court could come to a different conclusion, the test is whether or not there is a reasonable prospect that another court would come to a different conclusion.
- [6] 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.

[7] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[2] 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 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 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)’.

[8] 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*[3] 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

[9] I have considered the submissions made in support of the grounds for appeal and applying the applicable test, I am not convinced that the First Respondent 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. I say so for the following

reasons.

[10] Firstly, this matter concerns the application of established and trite principles governing the threshold for interfering with an arbitration award on review. There is no novel issue, nothing unique or any legitimate dispute about the applicable legal principles involved. In short: there is no legitimate dispute on law and the First Respondent is unable to cross this hurdle.

- [11] This is more so as this Court applied the applicable standard test on review.
- [12] Secondly, there is not a reasonable prospect that the factual matrix would receive a different treatment by the LAC. This Court perused the entire record, reflected in the judgment on all the evidence given and came to a conclusion based on that. There is no prospect that the LAC would come to a different conclusion or that the factual matrix would receive a different treatment.
- [13] Thirdly, the grounds for appeal raised by the First Respondent are disconnected from the actual findings by this Court. The First Respondent raised two grounds for leave to appeal, namely that the Court erred in finding that the dismissal of the Applicants was unfair when it was indeed established that they were dishonest and secondly that the Court erred in finding that the sanction of dismissal was too harsh.
- [14] It is evident from the judgment that this Court in essence found that the arbitrator misconceived the enquiry and that he had failed to decide a material issue namely whether the Applicants were indeed guilty of the misconduct they were dismissed for and whether dismissal was an appropriate sanction. A proper perusal of the judgment shows that no finding to the effect that the Applicants' dismissal was unfair and that the sanction was too harsh was made whatsoever.
- [15] In fact, I found that it was not appropriate to substitute the award, but rather to remit the matter for a hearing de novo, as principal and material issues were not properly determined. I held the view that it would be in the interest of the parties and of justice to have the issues properly decided.
- [16] The First Respondent's understanding that this Court found that the dismissal of the Applicants was unfair and that the sanction of dismissal was too harsh, is clearly incorrect. Those are the exact issues the arbitrator failed to decide properly and which are to be decided de novo.
- [17] Lastly, the LRA prescribes that labour disputes should be resolved expeditiously. This is a case where the dispute between the parties must be brought to finality and the matter must be arbitrated de novo.

[18] 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] See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

[2] (2016) 37 ILJ 1485 (LC) at para 3.

[3] 2013 (6) SA 520 (SCA) at para 24.

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Prepared on 10 October 2026 · Esheria