

SOUTH AFRICA / JUDGMENT

## Innovative Staffing Solutions (Pty) Ltd v National Bargaining Council for the Road Freight and Logistics Industry (J 1380/21) [2022] ZALCJHB 86 (5 April 2022)

[2022] ZALCJHB 86

COURT

Labour Court Johannesburg

BEFORE

D Mahosi

CASE / FILE NUMBER

J 1380/21

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1380/21

In the matter between:

INNOVATIVE STAFFING SOLUTIONS (PTY) LTD Applicant

and

NATIONAL BARGAINING COUNCIL FOR THE

ROAD FREIGHT AND LOGISTICS INDUSTRY Respondent

Decided: In Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand-down is deemed to be 5 April 2022.

JUDGMENT - APPLICATION FOR LEAVE TO APPEAL

MAHOSI, J

## Introduction

[1] The applicant launched an application for leave to appeal against the whole judgment and orders of this Court handed down on 24 November 2021 in terms of which the following order was made:

‘1. The applicant’s application and the counter-application are enrolled as urgent applications and the forms and service provided for in the Rules of the Court are dispensed with.

2. The applicant’s urgent application is dismissed.

3. Pending the final determination of the review application brought by the applicant under case number JR510/21:

3.1 The applicant is interdicted and restrained from holding out to any road freight companies that it is entitled not to comply with the respondent’s Main Collective Agreement (MCA) or that section 198(3) of the LRA is not applicable to its operations.

3.2 The applicant is interdicted and restrained from advising any road freight companies that, if it engages its services in terms of its standard service level agreement, employees will no longer be subject to the provisions of the respondent’s MCA.

3.3 The applicant is required to comply with the provisions of the respondent’s MCA.

4. There is no order as to costs.’

[2] The respondent opposed the application and both parties have filed

**submissions.**

## Submissions

[3] The applicant’s grounds of appeal are mainly that the Court erred in:

3.1 Finding that the dispute relating to whether the stay of the enforcement of the demarcation award has lapsed or not should be determined in urgent application.

3.2 Determining the applications on the basis that the Court order dated 11 May 2021 had lapsed due to the late submission of the returns for May 2021 as the issue was not raised for determination, the parties dealt with both applications on the basis that the Court order dated 11 May 2021 had been reinstated or revived and they were never afforded the opportunity to address the Court on the issue prior to the Judgment.

3.3 Finding that it was not competent for the parties to enter into an agreement to reinstate the Court Order that had lapsed.

3.4 Finding that the Court Order dated 11 May 2021 could only be reinstated or varied in terms of section 165 of the LRA or on common law grounds.

3.5 Finding that to an extent that an order in terms of the enforcement of the demarcation award has lapsed, the applicant was not entitled to the relief sought in terms of the notice of motion and that it followed that an order ought to be granted in terms of the notice of motion of the counter-application.

3.6 Dismissing the applicant's application and granting the relief sought in the respondent's counter-application.

- [4] In opposing, the respondent submitted that the applicant's application for leave to appeal is in line with its avowed objective of delaying the implementation of the demarcation award. Further that the applicant is buying time to make profit at the expense of the respondent.
- [5] It is the respondent's further submission that the Court was correct in finding that it was not competent for the parties to enter into an agreement to reinstate the Court order as paragraph 4 of the said Court order states that "in the event of the applicant breaching any of the conditions set out in paragraph 3 hereof, the relief granted in paragraph 1 and 2, hereof shall lapse".

Applicable law and

## analysis

- [6] In determining whether to grant an application for leave to appeal, the traditional test is whether there is a reasonable prospect that another court may come to a different conclusion.[1] In terms of section 166(1) of the Labour Relations Act[2] (LRA), a party to proceedings before the Labour Court, may apply to the Labour Court for leave to appeal to the Labour Appeal

Court (LAC) against any final judgment or final order of the Labour Court. Section 17 of the Superior Court Act,[3] which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

'Leave to appeal may only be given where the judge or judges 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;

(b) the decisions sought on appeal do 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 issue between the parties.'

- [7] Section 16(2)(a) of the Superior Court Act provides as follows:

‘(i) When at the hearing of the appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.

(ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.’

[8] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*,<sup>[4]</sup> the LAC made it clear that leave to appeal is not simply there for the taking, and that this Court must be cautious in granting leave to appeal and in assessing the requirement of the prospect of success. In this case, the Court stated as follows:

‘...The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the court a quo, need to be cautious when leave to appeal is granted, as should this Court when petitions are granted.

There are two sets of interests to consider. There are the interests of the parties such as appellant, namely who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to a different conclusion. There

are also the rights of employees who land up in a legal “no-man’s-land” and have to wait years for an appeal (or two) to be prosecuted.

This was a case which should have ended in the labour court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.’<sup>[5]</sup>

[9] In casu, having had regard to the applicant’s submissions and the respondent’s submissions in opposition I am not persuaded that there are reasonable prospects of a successful appeal. As such, I am of the view that this application is without merit and that it ought to be dismissed.

[10] With regard to costs, I am of the view that the requirements of law and fairness dictate that there should be no order as to costs.

[11] Accordingly, the following order is made:

Order

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

D. Mahosi

Judge of the Labour Court of South Africa

[1] See: Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others

(1999) 20 ILJ 2889 (LC) at 2890B; Ngcobo v Tente Casters (Pty) Ltd

(2002) 23 ILJ 1442 (LC) at 1443 para 2 and Tsotetsi v Stallion Security (Pty) Ltd

(2009) 30 ILJ 2802 (LC) at 2804 para 14.

[2] Act 66 of 1995 as amended.

[3] Act 10 of 2013.

[4] (2014) 35 ILJ 2399 (LAC).

[5] Ibid at 2405-2406.

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Prepared on 9 October 2026 · Esheria