

SOUTH AFRICA / JUDGMENT

Ivasen v Zeda Car Leasing (Pty) Ltd t/a Avis Fleet (JS 430/21) [2024] ZALCJHB 215 (31 May 2024)

[2024] ZALCJHB 215

COURT

Labour Court Johannesburg

BEFORE

Whittington

CASE / FILE NUMBER

JS430/21

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Source record**IN THE LABOUR COURT OF
SOUTH AFRICA, JOAHNNESBURG****Not Reportable****Case No: JS430/21**

In the matter of:

KEITH
LEGH
IVASEN Applicant
and
ZEDA CAR LEASING (PTY)
LTD T/A AVIS FLEET
Respondent

Heard:

In Chambers

Delivered:

31 May 2024

JUDGMENT

WHITTINGTON, AJ

- [1] The principles to be applied in applications for leave to appeal have been conveniently summarised in the matter of *Hartley v SA Social Security Agency*[1] as follows:

“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 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.

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.

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.

In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*, 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).’

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.’”

- [2] The applicant in the first instance suggests that delay in delivering the statement of response was not so substantial as to warrant the non-consideration of the prospects of success.
- [3] The period of the delay addressed in the heads of argument does not however take into account the full extent or facts of the delay as more specifically dealt with in my previous judgment at paragraph 7 thereof.
- [4] In particular no attention is given to the fact that no explanation was forthcoming regarding the failure to deliver a condonation application in the time provided for in an order of court. In fact, the delay in filing the condonation application was some one year and twenty court days.
- [5] With regard to the assertion that the input of the applicant ought to have been sought to ensure the formulation of a proper order, reliance is placed on the passage cited from the judgment of Toyota SA Marketing v Shmeizer.[2]
- [6] On reading the extract it is clear that the input of the employer in that matter was due to the fact that the court had insufficient information regarding the remuneration of the employee as a styling manager.
- [7] There is no suggestion in this matter that any input was required which would have a bearing on the order granted which related solely to aspects of the dismissal of the application for condonation and costs.
- [8] I accordingly do not agree with the applicant regarding these submissions.
- [9] A second challenge, which forms the main thrust of the submissions advanced in support of leave to appeal, amounts to a jurisdictional challenge raised for the first time in the proceedings for leave to appeal and after the dismissal of the application for condonation. This follows almost two years after the matter was referred to this court and after several rulings by Moshwana J, Deane AJ, Phehane J and myself. No special plea or point in limine was addressed in the proceedings before me.
- [10] I note that the Supreme Court of appeal, in considering challenges to jurisdiction has stated, per Mpati AJA in a unanimous judgment, in the matter of Purser v Sales; Purser and another v Sales and another[3]:

“I find myself in respectful agreement with Theron J when he says in the William Spilhaus case (supra):

‘... I can see no reason for thinking that our Courts in general would fail to give effect to the rule of the common law as it is to be gathered from Voet, 2.1.20, as read with 2.1.18, 26 and 27, that a defendant who has pleaded to the plaintiff’s main claim without objecting to the jurisdiction must, at any rate after the stage of *litis contestatio* has been reached, be considered to have

bound himself irrevocably to accept the jurisdiction of the court – and this even in a case where his failure to raise the question of the jurisdiction might have been due to some mistake on his part” (1001H–1002A).’ ”

[11] I see no reason to depart from these principals in this matter particularly as this was not an issue raised in regard to the condonation application.

[12] With regard to the further grounds set out in the application for leave to appeal, these relate in the main to whether the court ought to have come to a different determination notwithstanding the adequacy or otherwise of the explanation of the delay.

[13] My views on this aspect have been dealt with in some detail previously and I am not persuaded that another court would come to a different conclusion.

[14] Accordingly, the following order is made:

Order

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

D. Whittington

Acting Judge of the Labour Court of South Africa

[1]

[2023] JOL 59800 (LC) ; [2023] ZALCJHB 193 (15 June 2023).

[2]

[2002] 12 BLLR 1164 (LAC).

[3] [2001] 1 All SA 25 (A) at para 18.

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Prepared on 10 October 2026 · Esheria