

SOUTH AFRICA / JUDGMENT

Khumalo and Others v Gauteng Department of Economic Development (JS89/18) [2024] ZALCJHB 317 (20 June 2024)

[2024] ZALCJHB 317

COURT

Labour Court Johannesburg

BEFORE

Norton

CASE / FILE NUMBER

JS89/18

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

CASE NUMBER: JS89/18

In the matter between:

KHUMALO, JABU

FIRST APPLICANT

LESEJANE, PATRICK

SECOND APPLICANT

SEMELA, MALEFU

THIRD APPLICANT

and

GAUTENG DEPARTMENT OF

ECONOMIC DEVELOPMENT

RESPONDENT

Decided: In Chambers

Delivered: 20 June 2024

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

Norton AJ

Introduction

1. On 1 March 2024, I handed down my judgment dismissing the Applicant's claim for arrear payment of remuneration for the years 2012 to 2017. I did so as their claim as I had analysed it, constituted a dispute of interest and the Labour Court had no jurisdiction to entertain the matter. The employees sought to create new rights, and this may only be achieved through a bargaining process.
2. I explained further that if I was wrong on the jurisdictional point I was unpersuaded that the Applicants had made out a factual case for the relief they sought for three main reasons: firstly, they consented to a horizontal / lateral move remaining at level 5; secondly, they failed to be appointed into the post when it was advertised, they simply did not have the qualifications, and there were stronger candidates in the arena; and thirdly, they did not perform the more complex tasks required such as designing training materials or conducting research – they were not carrying out all the duties expected of an incumbent in the level 9 post.
3. The Applicants made an application for leave to appeal on 15 March 2024, and served and filed their submissions on 3 April 2024. The Respondent has opposed the application by filing a notice on 25 March 2024, they have not however made any submissions with respect to their opposition.

Applicants' grounds of appeal

4. Ground 1: The Third Applicant was more qualified than the First and Second Applicant and there was no horizontal move from one department to another which applied to her.[1]
5. Ground 2: The Court erred by not taking into account that the parties agreed that the issue to be decided was the entitlement to be remunerated at level 9.[2]
6. Ground 3: The Court erred on the issue of jurisdiction and should have invited the parties to address her on the matter. [3]
7. Ground 4: The Court erred by "placing more emphasis on the appointment of the Applicants and duties, despite the fact that it was not disputed that the Applicants were classified as Educational Practitioners".[4]

The Court's response

8. Ground 1: It is correct that the Third Applicant was more qualified than the First and Second Applicants. The Third Applicant was located at Level 7 and the First and Second Applicants at Level 5. The issue of transfer also did not apply to her. However, those facts do not detract from the overarching analysis which is that the Applicants (including the Third Applicant) have brought a claim best characterised as a mutual interest dispute which is not capable of adjudication by this court. Furthermore, if I am wrong on the jurisdictional point, the facts

showed that the Third Applicant was not performing the complex tasks of an Educational Practitioner and had not succeeded at the interview for the post, and therefore this ground must fail.

9. Ground 2: The Court was well aware that that was the issue before it. However, the overarching jurisdictional point remains regardless of agreements between the parties.
10. Ground 3: The issue of the jurisdictional challenge was identified in the minutes of the pre-trial meeting at paragraph 4 on page 86 of the Pleadings. The Applicants should have addressed the court on the matter.
11. Ground 4: Whilst the Applicants were classified as "educational practitioners" at levels 5 and 7, and that title appeared in the advert for the post at Level 9; the undisputed facts remains that they did not perform the entire scope of duties, and furthermore did not (apart from the Third Applicant) have a tertiary qualification as required for the Level 9 post.

Legal

issues

12. When considering the standard in applications for leave to appeal, section 17(1) of the Superior Courts Act 2013 (the "Act")

applies. That section reads,

"Leave to appeal may only be given where the judge or judges concerned are of the opinion that (a)(i) the appeal would have a reasonable prospect of success; or (a)(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."

13. The threshold to cross for an audience with an appeal court is a high one, requiring a strong prospect that another court would come to a different decision, or that there are compelling reasons justifying the attention of that court.
14. I am not persuaded that the Applicants have made a case to grant leave to appeal. The various challenges have been disposed of. I do not think that there are reasonable prospects that an appeal court would arrive at a different finding.

Order

The Application for leave to appeal is dismissed.

No order as to costs.

D Norton

Acting Judge of the Labour Court of South Africa

[1] Para 1.1 of Application for leave to appeal

[2] Para 20 of the Application for leave to appeal

[3] Para 3.1 of the Application for leave to appeal

[4] Para 12 of submissions

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Prepared on 12 October 2026 · Esheria