

SOUTH AFRICA / JUDGMENT

Lamastra v National Commissioner of Police and Another (C641/2009) [2011] ZALCCT 79 (4 February 2011) [2011] ZALCCT 79

COURT
Labour Court Cape Town

BEFORE
Steenkamp

CASE / FILE NUMBER
C641/2009

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Not
reportable
Not of
interest to other judges
IN
THE LABOUR COURT OF SOUTH AFRICA
HELD
AT CAPE TOWN
Case
no: C 641 / 2009
In

the matter between:

GORDON
ROBERT
LAMAstra Applicant
and
THE
NATIONAL COMMISSIONER OF
POLICE First
respondent
THE
PROVINCIAL COMMISSIONER OF
POLICE Second
respondent

RULING**ON LEAVE TO APPEAL****STEENKAMP J:**

[1] On 19 November 2010 I made an order in the following terms:

1.1 The second respondent's application for condonation for the late filing of his answering affidavit and heads of argument is dismissed.

1.2 The first respondent's award dated 1 April 2009 is reviewed and set aside in terms of section 158(1)(h) of the Labour Relations Act.

1.3 The award on sanction is substituted with the following award: "The second respondent (i.e. the employee, Gordon Robert Lamastra) is dismissed with effect from 1 April 2009".

1.4 There is no order as to costs.

[2] As appears from the order, the second respondent in the matter was the employee, Lamastra. He has now applied for leave to appeal.

[3] The application for leave to appeal is directed at my findings on condonation as well as the merits. I do not think it would be sensible for me to separate the two. Were I inclined to grant leave on either aspect, it would make sense for the Labour Appeal Court to address both aspects of the judgment.

[4] The test for granting leave to appeal is by now trite. The applicant must show that he has reasonable prospects of success on appeal.[1] It has also been stated as the question whether another court could come to a different conclusion.

[5] The background facts are set out fully in the judgment, which I enclose. In short, Lamastra, who is a police officer, stole darts from a shop. In an internal disciplinary hearing, the chairperson imposed a sanction of a "suspended dismissal" for six months and a fine of R500. I found that, given the facts of the case, this was so lenient that no reasonable decision maker could have come to the same conclusion.

[6] I think it is doubtful that another court would come to the conclusion that it could be expected of the South African Police Services to keep a thief in its employ. However, in paragraphs [27] – [39] of my judgment, I set out the anomalous situation with regard to the review of internal disciplinary hearings that has arisen in the light of the judgments of the Constitutional Court in *Chirwa v Transnet*[2] and *Gcaba v Minister of Safety and Security*[3]; and that of the Supreme Court of Appeal in *Ntshangase v MEC for Education, KwaZulu-Natal*. [4]

[7] Given that anomaly, it may be possible that another court could come to a different conclusion on the question of reviewability.

[8] The application for leave to appeal is therefore granted. Costs are to be costs in the appeal.

STEENKAMP J

Date of judgment: 4 February 2011

For the applicant: Attorney Dave Heggie

For the respondents: Adv Ewald De Villiers - Jansen

Instructed by

The State Attorney

[1] Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering 1986 (2) SA 555 561 E.

[2] 2006

(4) SA 367 (CC)

[3] (2010) 31 ILJ 296 (CC)

[4] 2010

(3) SA 210 (SCA)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCCT/2011/79.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/lamastra-v-national-commissioner-of-police-and-others-unknown-topic-alcct-2011>

Prepared on 12 October 2026 · Esheria