

SOUTH AFRICA / JUDGMENT

Mafoka and Others v HFR Schaefer Vervoer (Pty) and Others (JR2570/19) [2023] ZALCJHB 203 (6 July 2023)

[2023] ZALCJHB 203

COURT

Labour Court Johannesburg

BEFORE

O Mamabolo

CASE / FILE NUMBER

JR2570/19

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR2570/19

In the matter between:

RELEBOGILE CHRISTOPHER MAFOKA AND 24 OTHERS Applicants And HFR SCHAEFER
VERVOER (PTY) Appellant/First Respondent NATIONAL BARGAINING COUNCIL FOR THE ROAD
FREIGHT AND LOGISTICS INDUSTRY Second Respondent STEPHENS SHEMA MOLAPO N.O
Third Respondent

Decided: In Chambers

Delivered: 06 July 2023

JUDGMENT: LEAVE TO APPEAL

MAMABOLO, AJ

Introduction

- [1] The judgment that is the subject of an application for leave to appeal was handed down on 2 November 2022.
- [2] On 17 November 2022 Appellant/ First Respondent delivered its notice of application for leave to appeal.

- [3] In terms of clause 15.2 of the Practice Manual[1], the Appellant/ First Respondent was required to file its written submissions within 10 days of the filing of an application for leave to appeal.
- [4] The Appellant/ First Respondent's written submissions were only filed on 14 March 2023 which is outside the time limit prescribed by the Practice Manual[2]. These late submissions are not accompanied by an application for condonation.
- [5] Accordingly, the application for leave to appeal is not properly before the court. This notwithstanding, I took into consideration the objective of the Labour Relations Act[3] which is, to resolve disputes speedily and without delay. The court will accordingly exercise its discretion and determine the application for leave to appeal.
- [6] The principles governing the question of whether leave to appeal should be granted or not are well-established. I, nonetheless, summarise them for convenience.
- [7] Applications for leave to appeal are governed by sections 16 and 17 of the Superior Courts Act[4], Section 17 provides as follows:
- ‘(1) 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
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does 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 issues between the parties.’
- [8] The test on whether or not to grant leave to appeal is stringently applied in light of the high threshold set by section 17(1) of the Superior Courts Act[5].
- [9] The Labour Court solidified the test in *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*,[6] where it held that:

‘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.’

[10] This Court and the Labour Appeal Court have stressed that leave to appeal should not be granted lightly because meritless appeals delay finalisation of disputes. I have had regard to the submissions made by the Appellant/First Respondent in respect of this application and I am unconvinced that they come close to meeting the threshold referred to above. Furthermore, I am of the view that the Appellant/ First Respondent has failed to demonstrate that there exists any reasonable prospect that the Labour Appeal

Court could come to a different conclusion.

[11] I thus conclude that the Appellant/First Respondent has shown no reasonable prospect that another court could come to a different conclusion and the application for leave to appeal must fail.

[12] In the premise, I make the following order:

Order

1. The Appellant/First Respondent’s application for leave to appeal is dismissed.
2. There is no order of costs.

O Mamabolo

Acting Judge of the Labour Court of South Africa

[1] Practice Manual of the Labour Court of South Africa, effective 1 April 2013.

[2] Ibid.

[3] Act 66 of 1995, as amended.

[4] No.10 of 2013.

[5] No.10 of 2013.

[6] (2016) 37 ILJ 1485 (LC) at para 3.

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Prepared on 10 October 2026 · Esheria