

SOUTH AFRICA / JUDGMENT

Magazi and Others v Mobile Telephone Networks (Pty) Ltd - Application For Leave To Appeal (JS696/19) [2024] ZALCJHB 252 (21 June 2024)

[2024] ZALCJHB 252

COURT

Labour Court Johannesburg

BEFORE

M Makhura

CASE / FILE NUMBER

JS696/19

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS696/19

In the matter between:

NOSIPHO MAGAZI

First Applicant

MAYEPHU LAKAJE

Second Applicant

ZANELE VALERIE MDHLULI

Third Applicant

THEMBI KUNENE

Fourth Applicant

and

MOBILE TELEPHONE NETWORKS (PTY) LTD

Respondent

Heard: In Chambers

Delivered: 21 June 2024

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand-down

is deemed to 21 June 2024.

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

MAKHURA, J

- [1] On 24 April 2024, this Court dismissed an application brought in terms of item 16.2 of the Practice Manual of the Labour Court of South Africa (Practice Manual), read with Rule 7 of the Rules for the Conduct of Proceedings in the Labour Court, for the retrieval of the file. That application was brought by the Communications Workers' Union (CWU) acting on behalf of 19 members
- [2] On 16 May 2024, four of the 19 members, namely Nosipho Magazi, Mayephu Lakaje, Zanele Mdhuli and Thembi Kunene filed an application for leave to appeal the judgment and order dated 24 April 2024. The applicants' application was dismissed based primarily on the applicants' failure to provide a reasonable or sufficient explanation for the delay, including the 19 members' failure to provide any explanation to this Court to demonstrate any action on their part to prosecute the unfair dismissal dispute. In addition, the Court found that the applicants have no prospects of success on the basis that their failure to refer the unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) deprived it of the necessary jurisdiction.
- [3] Regarding the explanation for the delay, the four applicants contend that this Court overlooked their interests over the CWU's failure to prosecute the dispute within the prescribed period and that the Court failed to take into account all relevant factors which resulted in the delay and the prejudice to be suffered by the applicants. The applicants then dedicated a lot of effort on the prospects of success and argued that this Court erred by finding that the matter stands to be dismissed for lack of jurisdiction.
- [4] I have considered the written submissions filed on behalf of both parties. The applicants do not take issue with the excessive delay of 27 months. There is nothing in the applicants' submissions to suggest that the appeal court would find that this Court failed to exercise its discretion judicially. The explanation for the delay was woeful. There was no evidence placed before this Court to demonstrate that the four applicants were serious about pursuing their unfair dismissal dispute. There is nothing new raised by the applicants to suggest that the appeal court would find that they have prospects of success. Instead, the applicants made general submissions which are unsubstantiated by evidence.

[5] Having considered the test for applications for leave to appeal[1], I find that the appeal would have no reasonable prospects of success. The retrieval application does not raise any arguable legal issue and there are no compelling reasons for the appeal to be heard. It is therefore unnecessary to burden the Labour Appeal Court with this application. Accordingly, the application for leave to appeal stands to fail.

[6] In the premises, the following order is made:

Order

1. The application for leave to appeal is refused with no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

[1] Section 17 of the Superior Courts Act 10 of 2013.

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