

SOUTH AFRICA / JUDGMENT

Malapane v Glencore Operations South Africa (Pty) Ltd (JR603/15) [2017] ZALCJHB 160 (3 May 2017) [2017] ZALCJHB 160

COURT

Labour Court Johannesburg

BEFORE

Malindi

CASE / FILE NUMBER

JR603/15

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JR603/15

In

the matter between:

LETHOKGO

ABRAM MALAPANE

Applicant

and

GLENCORE

OPERATIONS SOUTH AFRICA (PTY) LTD

Respondent

Heard:

In Chambers

Delivered:

03 May 2017

JUDGMENT**ON APPLICATION FOR LEAVE TO APPEAL**

MALINDI AJ

[1]. The Applicant, who is the First Respondent in the review application, Lethokgo Abram Malapane (Malapane), applies for leave to appeal against the whole of the judgment and order of this Court which was handed down on 5 January 2017.

[2]. The Applicant for review, Glencore Operations South Africa (Pty) Ltd (Goedgevonden Colliery) (the employer) opposes the application.

[3]. The main grounds of appeal are that:

3.1. the Court erred in remitting the matter back to the CCMA for arbitration de novo before a different Commissioner without giving reasons why it could not substitute its own decision;

3.2. the Court reversed an adverse credibility finding made by the Commissioner against the employer's only witness whereas credibility findings may not be disturbed as they are to be decided by the trier of the facts; and

3.3. that the Court found Malapane guilty of a charge that was not proffered against him.

[4]. I have considered the written submissions by both parties and am of the view that there exists a reasonable prospect of success on appeal and therefore that leave to appeal should be granted.

[5]. In the circumstances I make the following order:

1. Leave to appeal against the whole judgment and order of the judgment which was handed down on 5 January 2017 under case number JR 603/2015 is granted.
2. Costs shall be costs in the appeal.

Malindi, AJ

Acting Judge of the Labour Court

Submissions:

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