

SOUTH AFRICA / JUDGMENT

Matlala v G4S Cash Solutions (Pty) Ltd (Application for Leave to Appeal) (JS165/2016) [2024] ZALCJHB 313 (20 June 2024) [2024] ZALCJHB 313

COURT

Labour Court Johannesburg

BEFORE

Norton

CASE / FILE NUMBER

JS165/2016

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS165/2016

In the matter between:

MATLALA, JERRY Applicant aand G4S CASH SOLUTIONS (PTY) LTD Respondent Decided: In
Chambers Delivered: 20 June 2024

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

NORTON AJ

Introduction and judgment (in summary)

1. On 15 April 2024, I handed down judgment dismissing the Applicant's action for a claim for payment of his arrear salary from May 2013 to March 2016, amounting to R262 500,00 plus interest.
2. Mr Matlala brought his claim in terms of section 77(3) of the Basic Conditions of Employment Act, 1997 (the "BCEA") for breach of his employment contract.
3. Mr Mabaso relied on *Coca Cola v Van Wyk*[1], a 2015 Labour Appeal Court ("LAC") decision in which the court found that an employee whose dismissal was assessed to be unfair by the CCMA was entitled to institute a contractual claim from the date of the award which ordered reinstatement (September 2004), to the date of implementation of that award (February 2009), and thereafter, once quantified, to execute by way of a writ. In his application for leave to appeal he relies particularly on paragraph 24 of the judgment:

- [24] ... if the employee, after the reinstatement order and during the time that the employer exercises its review and appeal remedies to exhaustion, tenders his/her labour he/she does so in terms of the employment contract. He/she is therefore entitled to payment in terms of the contract of employment. The claim is therefore a contractual one, wherein the employee would have to set out sufficient facts to justify the right or entitlement to judicial redress. The employee would inter alia have to prove that the contract of employment is extant; that he/she tendered his/her labour in terms thereof; and that the employer refuses or is unwilling to pay him/her in terms of that contract...
4. The employer argued that Mr Matlala's remedy is not to pursue a breach of contract claim in terms of section 77(3) of the BCEA, but to pursue a contempt of court application. The relevant case authority in this regard is *Kubeka & others v Ni-Da Transport (Pty) Ltd.*[2]
 5. I found that the route of a contractual claim by virtue of section 77(3) of the BCEA only applies in situations in which the employer has accepted the employee back into employment and the contract of employment revives. This was not the factual situation before the court, because G4S never accepted Mr Matlala back into service and the analysis arising from the *Kubeka* and *Hendor* cases therefore applied. In short, I found that Mr Matlala should have proceeded by way of contempt proceedings and not by way of a section 77(3) claim to enforce the order of reinstatement.

Grounds for application for leave to appeal

6. Mr Matlala has made an application for leave to appeal on 3 May 2024.
7. The grounds are as follows:
 - 7.1. The judgments of both *Kubeka* and *Hendor* relate to cases where court orders were issued. In Matlala's case, there was an arbitration award. "The facts of the judgments are not similar." [3]
 - 7.2. The court erred by finding that in the *Coca Cola* case it was a requirement that an employer accept an employee's tender of service, to resuscitate the employment relationship before a contractual claim would arise. [4] Matlala expresses the point as follows, "...it is a contractual claim and an employee is entitled to be paid for the period that he did not work due to the employer's refusal of the tender of service. It is submitted that this judgment did not say that it is a requirement for such an employee to be reinstated first."
8. The employer has not opposed the application for leave to appeal.

Legal considerations

9. 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.”

10. 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.

11. In *Seathlolo & others v Chemical Energy Paper Printing Wood & Allied Workers Union & others*[5] Judge Van Niekerk, discussing the test to be applied states,

“The traditional formulation of the test that is applicable ...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. ...the use of the word “would” in s 17(1)(a)(i) is 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...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...The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which that there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law...”[6]

12. In my view the issue of backpay to be awarded, and the applicable duration is important to clarify. There are a number of possible time periods:

12.1. From date of dismissal to date of the award;

12.2. From date of dismissal to reinstatement; or

12.3. From date of the award to reinstatement.

13. Clarity would be useful too, for the Labour Appeal Court to distinguish the situations in which contempt proceedings should be instituted, or a contractual claim triggered in terms of s 77(3) of the BCEA, in circumstances in which there has been an arbitration

award or court order in favour of an employee for reinstatement, but the employer refuses to abide with its provisions.

14. I am persuaded that there are good reasons for the Labour Appeal Court to consider the factual matrix of the Matlala case and to pronounce on some of the issues outlined above.
15. In the circumstances I grant the Applicant leave to appeal to the Labour Appeal Court as contemplated in section 166(1) of the LRA.

Order

The application for leave to appeal to the Labour Appeal Court is granted.

D Norton

Acting Judge of the Labour Court of South Africa

20 June 2024

[1] (2015) 36 ILJ 2013 (LAC)

[2]

(2021) 42 ILJ 499 (LAC)

[3] Para 1.2 in the Application for leave to appeal

[4] Para 12 of the submissions

[5]

(2016) 37 ILJ 1485 (LC). See too Sepheka v Du Pont Pioneer (Pty) Ltd

(2019) 40 ILJ 613 (LC)

[6] At para 3

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Prepared on 10 October 2026 · Esheria