

SOUTH AFRICA / JUDGMENT

Mavundla v Gotcha Security Services (Pty) Ltd (J871/21) [2023]

ZALCJHB 279 (20 October 2023)

[2023] ZALCJHB 279

COURT

Labour Court Johannesburg

BEFORE

Nkutha-Nkontwana

CASE / FILE NUMBER

J871/21

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J871/21

In the matter between:

NHLANHLA ERNEST TEBOGO MAVUNDLA Applicant And GOTCHA SECURITY SERVICES (PTY) LTD Respondent

Decided: In Chambers

Delivered: 20 October 2023

JUDGMENT: LEAVE TO APPEAL

NKUTHA-NKONTWANA, J

- [1] On 11 May 2023, I handed down a judgment wherein I dismissed the applicant's claim for arrear salary consequent to a reinstatement award by the Commission for Conciliation, Mediation and Arbitration (CCMA). On 1 June 2023, the applicant filed an application for leave to appeal the whole judgment and was duly filed the written submissions per Rule 30 (3A) of the Labour Court Rules[1] and Clause 15.2 of the Practice Manual[2].
- [2] Clause 15.2 of the Practice Manual further provides that an application for leave to appeal will be determined by a Judge in chambers unless the Judge directs otherwise. I see no reason to direct otherwise and will therefore determine the leave to appeal application in chambers.

[3] The test for granting leave to appeal is trite where the applicant should in essence show that appeal would have a reasonable prospect of success. In *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*,^[3] the Court described 'reasonable prospects of success' as follows:

'[16] Once again it is necessary to say that leave to appeal, especially to this Court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.'

[4] The applicant filed comprehensive written submissions wherein the grounds of appeal upon which this application is pegged are well articulated and I propose not to restate them in this judgment. I have considered all the submissions and, to the extent that the issues canvassed in this application are addressed in detail in the impugned judgment, I defer to the reasons therein.

[5] Nevertheless, I deem it expedient to refer to the order by my brother Moshwana J, dated 28 May 2021, in contempt proceedings launched by the applicant. It was ordered that:

'1 The respondents reinstate the applicant with effects from the 01 June 2021, on the same terms & conditions that applied at the time of his dismissal. Such terms are as follows:

1.1 The applicant shall perform duties as per his employment contract with the job title of VIP Protection.

1.2 The applicant shall receive the keys to the vehicle and perform his normal VIP Driver duties.

1.3 There will be no further conditions burdened upon the applicant when to returns to work.

1.4 The applicant shall not be made to stand outside.

2. There is no order as to cost.'

[6] It is clear from the above order that the respondent was not found to be in contempt of the arbitration award. Moreover, it is accepted that motion proceedings cannot be used to resolve factual issues because they are not designed to determine probabilities; save in instances where an interim relief is sought.^[5]

[7] Thus, under the Plascon-Evans rule, where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent together with the facts alleged by the latter, justify

such order. It may be different if the respondent's version consists of “bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers”.^[6]

[8] It follows that this application is devoid of merit and, as such, there are no prospects that another court would reasonably arrive at a decision different to the one reached by this Court.

[9] In the circumstances, the application for leave to appeal is dismissed with no order as to costs.

P Nkutha-Nkontwana

Judge of the Labour Court of South Africa

[1] GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court.

[2] Practice Manual of the Labour Court of South Africa, effective 2 April 2013.

[3]

[2016] JOL 36940 (SCA) at paras [16]- [17]. See also *Smith v S*

[2011] JOL 26908 (SCA) at para [7]; *Greenwood v S*

[2015] JOL 33082 (SCA) at para [4]; *Kruger v S*

[2014] JOL 31809 (SCA) at para [2]; *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*

[2016] ZAGPPHC 489 (24 June 2016).

[4] See: Annexure E to the founding affidavit, p 29.

[5] See: *National Director of Public Prosecutions v Zuma*

[2009] ZASCA 1; 2009 (2) SA 277 (SCA) (*Zuma*) at para [26]; *Cooper and another NNO v Curro Heights Properties (Pty) Ltd*

[2023] ZASCA 66; 2023 (5) SA 402 (SCA) at para [13].

[6] *Zuma supra*.

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Prepared on 9 October 2026 · Esheria