

SOUTH AFRICA / JUDGMENT

Mdluli v National Housing Finance Corporation (Application for Leave to Appeal) (J841/2024) [2024] ZALCJHB 385 (3 October 2024)

[2024] ZALCJHB 385

COURT

Labour Court Johannesburg

BEFORE

Tlhotlhamajane

CASE / FILE NUMBER

J841/2024

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: J841/2024

In the matter between:

DIMAKATSO MDLULI Applicant and NATIONAL HOUSING FINANCE CORPORATION Respondent

Decided in Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website and released to Saflii. The date for hand-down is deemed to be on 03 October 2024

RULING – APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

- [1] The applicant had approach the Court on an urgent basis seeking various forms of relief under section 77(3) read with section 77A(e) of the Basic Conditions of Employment Act (BCEA).
- [2] The application was opposed and the Court had on 23 August 2024, struck it off the roll on account of lack of urgency, with no order as to costs. The applicant has since filed an application for leave to appeal against the whole judgment and order of the Court.
- [3] The grounds upon which leave to appeal is sought on an urgent basis mainly pertained to the applicant's personal and financial circumstances which the Court does not deem necessary to deal with in the light of the legal conclusions to be reached below.

- [4] The respondent has opposed this application and the legal points it had raised are in line with the approach which the Court intends to take in this matter. It is trite that an appealable “judgment or order” must at least meet three requirements. It must be final in effect and not susceptible to alteration by the Court of first instance; it must be definitive of the rights of the parties; and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.[1]
- [5] The striking of a matter from the urgent roll, for want of urgency, merely suggests that an applicant failed to meet the requirements and is not definitive of the rights of the parties. This is so in that an applicant in such circumstances can again on proper notice and in accordance with the rules of court, approach the Court through its Registrar, to re-enrol the matter on the ordinary roll for hearing in the ordinary course[2]. To the extent that the applicant in this leave to appeal further sought to adduce new evidence, these are issues that she can raise when re-enrolling the matter, by supplementing her papers.
- [6] Against the above legal principles, it follows that the applicant’s primary application having been struck off the roll, it remains pending before the Court, and thus the questions of appealability do not therefore even arise.
- [7] I have further had regard to the issue of costs, and it is my view that such an order is not warranted given the circumstances of

this case.

- [8] Accordingly, the following order is made;

Order:

1. The applicant’s application for leave to appeal is dismissed.
2. To the extent that the applicant so desires, she is granted leave to supplement her papers before the Court.
3. There is no order as to costs

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

- [1] Erasmus Superior Court Practice, 2nd Edition (Van Loggerenberg),
- [2] See *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others* (379/05)
- [2006] ZASCA 51; 2006 (4) SA 292 (SCA); [2006] 2 All SA 565 (SCA) (31 March 2006); *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Others* (36515/2021) [2022] ZAGPJHC 754 (6 October 2022) at para 33

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Prepared on 9 October 2026 · Esheria