

SOUTH AFRICA / JUDGMENT

Mmagory and Others v Davis and Others (JR1078/09) [2014] ZALCJHB 112 (12 March 2014) [2014] ZALCJHB 112

COURT

Labour Court Johannesburg

BEFORE

E Molahlehi

CASE / FILE NUMBER

JR1078/09

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: JR 1078/09

In the matter between:

MMAGORY JACOBS First

Applicant

JAFTHA SONIA Second

Applicant

LINKS IRENE Third

Applicant

And

DAVIS LEVY First

Respondent

METAL AND ENGINEERING INDUSTRIES

BARGAINING COUNCIL Second

Respondent

BETA SCAN ELECTRONICS Third

Respondent

STINGER ELECTRONICS Fourth

Respondent

Delivered: 12 March 2014

JUDGMENT:

LEAVE TO APPEAL

MOLAHLEHI J

- [1] This is an application for leave to appeal against the judgement of this Court made on 5 July 2013 in terms of which the arbitration award made under case number MGA 7135, dated February 2009, was reviewed and set aside. The dismissal of the applicants was found to have been unfair and substituted with an order to the effect that the dismissal of the applicants was substantively unfair.
- [2] The background facts are set out in the judgment of the Court a quo and therefore there is no need to repeat the same herein. The applicant has raised several grounds of appeal. It is not necessary in my view to repeat the same in this judgment. In determining whether there is a basis to interfere with the arbitration award the Court applied the reasonable decision maker test set out in *Sidumo and Another v Rustenburg Platinum Ltd and Others*,^[1] where it was held that the power to determine whether the dismissal of the employee was fair rests with the Commissioner and not the employer.
- [3] In considering this leave to appeal I have taken into account the well-established test of reasonable prospects of success on appeal.

The question in this regard being whether there are reasonable prospects that another Court is likely to arrive at a different

conclusion to that of the Court a quo if leave to appeal was to be granted. The leave to appeal may also be granted where there are compelling reasons to do so or if there are competing judgments on the issue/s determined by the Court a quo.

- [4] In my view, considering the grounds for leave to appeal and the submissions made the applicant together with the judgment of the

Court a quo I am not persuaded that the applicant has made a case warranting the granting of leave to appeal. In other words there are no reasonable prospects that another Court is likely to arrive at a decision different to the one reached by this Court.

Order

[5] In the premises, leave to appeal to the Labour Appeal Court is dismissed.

E Molahlehi

Judge of the labour court of South Africa

Appearances:

Matter considered in Chambers

[1] 2008

(2) BLLR 158 (CC).

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