

SOUTH AFRICA / JUDGMENT

Motha v Shell Downstream SA (Pty) Ltd (JS398/2022) [2024] ZALCJHB 257 (28 June 2024) [2024] ZALCJHB 257

COURT

Labour Court Johannesburg

BEFORE

L Mukome

CASE / FILE NUMBER

JS398/2022

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS398/2022

In the matter between:

LUNGILE MOTHA

Applicant

and

SHELL DOWNSTREAM

SOUTH AFRICA (PTY) LTD

Respondent

Decided: In Chambers

Delivered: 28 June 2024

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

MUKOME, AJ

Introduction

- [1] The Applicant applied for leave to appeal against the whole handed down on 18 March 2024.
- [2] The application for leave to appeal is opposed by the Respondent.
- [3] Both parties have filed submissions in respect of the application for leave to appeal. I have considered the grounds for appeal as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

The test for leave to appeal

- [4] To be entitled to leave to appeal, an applicant must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion to that reached.
- [5] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[1], this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

‘The traditional formulation of the test that is applicable in an application such as the present 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. As the respondents observe, the use of the word “would” in s17(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 (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015)). 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, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015)’

The current application

- [6] I have considered the submissions made in support of the grounds for appeal and applying the applicable test, I am not convinced that the Applicant has made out a case that there is a reasonable prospect that another court might come to a different conclusion, for the reasons set out below.

- [7] This Court has jurisdiction to deal with matters brought by virtue of section 77(3) of the Basic Conditions of Employment Act[2] (BCEA), however, jurisdiction is also determined on the basis of the case as pleaded by the claimant in her pleadings.[3]
- [8] In my assessment of the Applicant's pleadings, the Applicant's referral is based on fair dealing. The Applicant does not indicate that any of the rights that she asserts have been incorporated into her contract of employment, however, she submits that the Respondent committed a fundamental breach of the employment contract and acted in bad faith by orchestrating unlawful reasons for the termination of her employment contract.
- [9] The Applicant further argues that her termination was unlawful as the Respondent acted in bad faith by employing a white, inexperienced male into the Applicant's position.
- [10] While the Applicant asserts that the referral under JS398/22 is a contractual dispute, falling within the provisions of section 77(3) of the BCEA, an analysis of the pleadings shows that the referral concerns the unfairness of her termination of employment.
- [11] The Applicant has previously referred an unfair dismissal dispute under JS325/20, and now proceeds to raise the same issue, between the same parties, based on the same cause of action with the same subject matter.
- [12] In the premises, I make the following order:

Order

1. The application for leave to appeal is dismissed with no order as to costs.

L Mukome

Acting Judge of the Labour Court of South Africa

- [1] [2016] ZALCJHB 72; (2016) 37 ILJ 1485 (LC) at para 3.
- [2] Act 75 of 1997.
- [3] See: Gcaba v Minister for Safety and Security and Others [2009] ZACC 26; (2010) 31 ILJ 296 (CC) at para 75.

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Prepared on 10 October 2026 · Esheria