

SOUTH AFRICA / JUDGMENT

Nchoe and Another v Education Labour Relation Council and Others (JR 2214/20) [2024] ZALCJHB 311 (23 July 2024)

[2024] ZALCJHB 311

COURT

Labour Court Johannesburg

BEFORE

Ntsoane

CASE / FILE NUMBER

JR 2214/20

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: JR 2214/20

In

the matter between:

PHILEMON

NCHOE

First

Applicant

ITUMELENG

MEDICHANE

Second

Applicant

and

EDUCATION

LABOUR RELATION

COUNCIL

First

Respondent

PANELIST

PAUL PHUNDU

Second

Respondent

DEPARTMENT

OF HIGHER EDUCATION

AND

TRAINING – WESTCOL TVET COLLEGE
Third
Respondent

Decided: In Chambers

Delivered: 23 July 2024

JUDGMENT

– APPLICATION FOR LEAVE TO APPEAL

NTSOANE, AJ

Introduction

- [1] This is an application for leave to appeal following a judgment handed down by this Court in terms of which the Applicant's application was dismissed with costs.
- [2] The Applicant filed an application for leave to appeal and the application remains unopposed by the Third Respondent.
- [3] The principles applicable to applications for leave to appeal are trite. This Court must determine whether there is a reasonable prospect that another court (The Labour Appeal Court), would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal[1]. The test whether to grant leave to appeal is stringently applied in the light of the high threshold set by section 17(1) of the Superior Courts Act[2] .
- [4] As indicated above, the test for leave to appeal has become more stringent and this Court solidified this test in *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[3] where it held:

1.1 “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) are 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.”

[5] I have reflected on my judgment and also considered the submissions in support of the appeal. I do not intend on repeating what has been said in the judgement as same, in my view covered the essential issues of the review application. I thus conclude that the applicant, overall, has shown no reasonable prospect that another Court could come to a different conclusion, and the leave to appeal application must fail. There are no legitimate disputes on the law raised nor are there any unusual issues that deserve the attention of the LAC.

[6] In the premise I make the following:

Order

6.1 The leave to appeal is dismissed.

Ntsoane AJ

Acting Judge of the Labour Court of South Africa

[1] See Section 17 of the Superior Court Act 10 of 2013, which provides: ‘(1) Leave to appeal may only be given where the judge or judges are of the opinion that (a)

(i) the appeal would have a reasonable prospect of success; or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decisions sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issue between the parties.’

[1] See Section 17 of the Superior Court Act 10 of 2013, which provides:

‘(1) Leave to appeal may only be given where the judge or judges are of the opinion that

(a)

(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decisions sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issue between the parties.’

[2] See *The Mont Chevaux Trust v Tina Goosen and 18 others* 2014 JDR 2325 (LCC) at para 6; *Mgezeni Gasbat Nxumalo v the National Bargaining*

Council for the Chemical Industry (NBCCI) and Others JR1170 /2013 unreported; *Nannen and Others vs Momentum and Others* (6796/05,

2275/05) (2017] ZAGPPHC 433 (14 June 2017)

[3]

(2016) 37 ILJ 1485 (LC) at para 3

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