

SOUTH AFRICA / JUDGMENT

Nkatingi v Road Agency Limpopo (SOC) Ltd (J793/20) [2021] ZALCJHB 30 (4 March 2021) [2021] ZALCJHB 30

COURT

Labour Court Johannesburg

BEFORE

Coetzee

CASE / FILE NUMBER

J793/20

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J793/20

JABU

HERMAN

NKATINGI

Applicant

and

ROAD

AGENCY LIMPOPO (SOC)

LTD

Respondent

Date heard:

In chambers

Date delivered:

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 4 March 2021.

Summary:

Application for leave to appeal a cost order

RULING**– LEAVE TO APPEAL**

COETZEE AJ

- [1] In the ex tempore judgment with reasons of 13 August 2020 I struck the applicant's urgent application from the roll with costs as it lacked urgency.
- [2] The applicant on 2 September 2020 filed an application for leave to appeal reserving the right to amplify its grounds for appeal once the written judgment became available. The Registrar provided the applicant with the written judgment on 12 February 2021. The applicant has not indicated that it would or has filed a supplementary notice. It was also not entitled to do so as the ex tempore judgment contained the reasons for the judgment.
- [3] The respondent is not opposing the application for leave to appeal.
- [4] The application for leave to appeal sets out the various grounds of appeal.
- [5] The applicant did not file written submissions in support of the application for leave to appeal. The application for leave to appeal seems to contain, at least in part, legal submissions.
- [6] I have considered the application for leave to appeal.
- [7] In terms of Rule 30 (2)

'If leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period'

- [8] The applicant timeously applied for leave to appeal.
- [9] Section 17 of the Superior Courts Act, No 10 of 2013 regulates an application for leave to appeal from a decision of a High Court. It reads as follows:

'17. Leave to appeal.—

- (1) Leave to appeal may only be given where the judge or judges concerned 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 decision 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 issues between the parties!'

[10] This section also applies to applications for leave to appeal in the Labour Court.[1]

[11] The Court in *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others*[2] conveniently summarised the approach to an application for leave to appeal:

'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 (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) and also *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others* [3].'

[12] I do not intend to deal with each of the grounds of appeal separately. The applicant contends that there was no reason to make an adverse cost order against it for the applicant granting respondent 24 hours to file an answering affidavit under circumstances where the respondent filed such an affidavit and never asked for a postponement to which the applicant would have agreed.

[13] The court made an adverse cost order " ... because of the way in which this urgent matter was handled and placed before this Court, creating urgency, and granting the respondent 24 hours in which to come to court"

[14] The respondent disputed urgency and objected to the applicant's attempt to file a replying affidavit almost when the matter was heard. The Court accepts that there was an employment relationship in existence, but considered that the way urgency was created, under the circumstances, warranted a cost order. The applicant on 5 August 2020 received

notice of the disciplinary hearing set for 12 August 2020. The applicant puts the respondent on terms by 11 August 2020 to agree to postpone the hearing. This is one day before the hearing. When the respondent refused, the applicant called the respondent before Court virtually on 24 hours' notice. There was no explanation why the applicant did not call for a response by 6 or 7 August 2020 to enable itself to approach this Court with reasonable notice to the respondent. Such conduct warranted a cost order.

[15] The applicant has not raised grounds other than those in the hearing of the matter which matters were addressed in the reasons for the judgment.

[16] In my view after careful consideration of the applicant's stated grounds for leave to appeal and the submissions, there is nothing that persuades me that any appeal would have a reasonable prospect of success.

[17] There are no other compelling reasons why leave to appeal should be granted.

[18] There is no reason why a cost order should be made in this application.

[19] I make the following order:

[19.1] The application for leave to appeal is dismissed.

[19.2] There is no order as to costs.

Coetzee AJ

Acting judge of the Labour Court

Representation:

For the applicant: Considered in chambers

For the Respondent: Considered in chambers

[1] Section 151 of the Labour Relations Act, Act 66 of 1995

[2] JR1170 /2013 unreported

[3] (2016) 37 ILJ 1485 (LC)

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Prepared on 11 October 2026 · Esheria