

SOUTH AFRICA / JUDGMENT

Shoprite Checkers (Pty) Ltd v Nkosi and Others (JR625/20) [2022] ZALCJHB 137; (2022) 43 ILJ 1386 (LC) (20 May 2022) [2022] ZALCJHB 137

COURT

Labour Court Johannesburg

BEFORE

P Nkutha-Nkontwana

CASE / FILE NUMBER

JR625/20

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR625/20

In the matter between:

SHOPRITE CHECKERS (PTY) LTD

Applicant

and

PRINCE NKOSI

First Respondent

COMMISSIONER MUSOLWA RAPALALANE N.O Second Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION (“CCMA”)

Third Respondent

Decided: In chambers

Delivered: In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 20 May 2022.

JUDGMENT:**APPLICATION FOR LEAVE TO APPEAL**

NKUTHA-NKONTWANA, J

- [1] This is an opposed leave to appeal where the first respondent seek leave to appeal the whole judgment and order of this Court handed down on 7 February
2022. Leave is sought to appeal to the Labour Appeal Court (LAC) on the grounds articulated in its notice of the application for leave to appeal. For expediency, the parties are referred to as they are cited in the main

judgment.

- [2] The first respondent (Mr Nkosi) failed to file his written

submissions

as prescribed by Rule 30(3A) read with clause s 15.2 of the Labour Court Practice Manual (Practice Manual). Nonetheless, to the extent that there are some scanty contentions contained in the notice for leave to appeal, I have dealt with the merits of this application.

- [3] The threshold for granting leave to appeal in terms of section 17(1)(a)(i) of the Supreme Courts Act[1] (SCA) is high. To succeed, a party seeking leave to appeal must show that the appeal ‘would’ have reasonable prospects of success. Put otherwise, it must be show that another court ‘will’, not ‘might’, differ from the court whose judgment is sought to be appealed against.[2] When it comes to labour matters, another pivotal consideration is the imperative that labour disputes must be expeditiously resolved.[3]
- [4] The grounds of appeal in the present instance are outlined in Mr Nkosi’s notice of appeal and are dealt with in detail in the applicant’s (Shoprite) written submissions. I propose not to restate them in this judgment. In addition, to the extent that the issues canvased in this application are addressed in detail in the main judgment, I defer to the reasons therein. Yet, I need to show the meritless of this application by dealing with what seems to be the main impugn against the main judgement.
- [5] Mr Nkosi contends that I failed to take into account the evidence of three warnings that had been issues against him on 30 September 2019 which prompted his resignation. Clearly, Mr Mahafha, Mr Nkosi’s counsel, seem persists with this baseless submission despite the fact that there is no evidence on record that points to any complaint or grievance that had been lodged after the meeting of 30 August 2019. In fact, the warnings he seems to be referring to were all issued on 7 August 2019 and were dealt with during the grievance meeting of 20 August 2019. Obviously, as correctly submitted by Mr Cithi, Shoprite’s attorney, Mr Mahafha’s submissions are imprudent and ill-advised. Worse still, they are aimed at muddling the issues.

- [6] Lastly, Mr Nkosi patently misconstrued the test as well as the case law dealing with constructive dismissal cases. As stated the authorities referred to in the main judgement, threshold for intolerability is a high one and entails an unendurable or agonising circumstance marked by the conduct of the employer that must have brought the employee's tolerance to a breaking point.[4] Mr Nkosi's case dismally falls short of this standard.
- [7] Having holistically assessed all the grounds of appeal, I am convinced that there are no prospects that another court would reasonably arrive at a decision different to the one reached by this Court. Even though this application is undoubtedly unmeritorious, I am disinclined to award costs against Mr Nkosi, an individual litigant.
- [8] In the circumstances, the application for leave to appeal is dismissed with no order as to costs.

P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa

- [1] Act 10 of 2013.
- [2] See *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H; *Acting National Director of Public Prosecutions & Others v Democratic Alliance in re: Democratic Alliance v Acting National Director of Public Prosecutions & others* (19577/09)
- [2016] ZAGPPHC 489 (24 June 2016) at para 25.
- [3] See: *Martin and East (Pty) Limited v National Union Mineworkers and Others* (2014) 35 ILJ 2399 (LAC).
- [4] See the main judgment, paras 27-28.

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Prepared on 14 October 2026 · Esheria