

SOUTH AFRICA / JUDGMENT

Synchronised Logistical Solutions (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (PR133/23) [2025] ZALCPE 8 (19 May 2025)

[2025] ZALCPE 8**COURT**

Labour Court Port Elizabeth

BEFORE

Molotsi

CASE / FILE NUMBER

PR133/23

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Source record**THE LABOUR COURT OF
SOUTH AFRICA, GQEBERHA****Not Reportable****Case****No: PR133/23****In**

the matter between:

SYNCHRONISED
LOGISTICAL
SOLUTIONS (PTY)
LTD
Applicant
and
COMMISSION
FOR CONCILIATION
MEDIATION
& ARBITRATION
First Respondent
NDZUNDZU,
S N.O.
Second Respondent
NUMSA
Third Respondent
NJUNGWENI,
N
Fourth Respondent

Heard:

Delivered: 19 May 2025

JUDGMENT

MOLOTSI, AJ

[1] This is an application for leave to appeal against the whole of the judgment and order handed down on 13 January

2025. The applicant is Synchronised Logistical Solutions (Pty) Ltd.

[2] The application for leave to appeal was filed on 31 January 2025.

Grounds for leave to appeal

[3] The applicant's grounds for leave to appeal include, amongst others:

3.1. The Court erred in failing to appreciate, have regard to the fact that each of the following, independently, constitutes gross irregularities on the part of the arbitrator:

3.1.1. By adopting the view that rules at the workplace were limited to express rules and failing to apply the Code of Good Practice: Dismissal, the arbitrator was required to determine whether or not the fourth respondent (employee) could reasonably be expected to have been aware of the rule or standard;

3.1.2. Failing to assess the conflicting versions in any manner whatsoever; and

3.1.3. By failing to make any finding in respect of Charge 2.

3.2. The Court erred in failing to appreciate that each of the irregularities referred to in paragraph 1 amounted to the arbitrator misconceiving the nature of the enquiry and its duties, which deprived the applicant of a full and fair adjudication of the issues.

3.3. The Court erred in failing to appreciate and have regard to the law to the effect that gross irregularities render awards reviewable regardless of the reasonableness of the result.

3.4 The Court erred in failing to appreciate that, in South African law, making a finding of procedural unfairness under the circumstances where that was not an issue between the parties, constitutes the arbitrator exceeding his powers.

3.5. The Court erred in concluding that who started the discussion between the employee and Mbelu (the ER Manager) was "neither here nor there" under the circumstances where determining that fact was necessary for the purposes of determining the probabilities.

3.6. The Court erred in concluding that the employee's contract of employment and clause 25 of the applicant's Code of Conduct stood to be interpreted to exclude salaries from confidential information.

3.7. The Court erred in failing to appreciate and draw the distinction between an employee having the right to discuss his/her own salary (terms and conditions of employment) with another, in accordance with the provisions of s 78(1)(b) of the Basic Conditions of Employment Act[1] versus the employee having discussed the salary issues of other individuals.

3.8. The Court erred in finding, in the alternative, that even if discussing salary issues constitutes confidential and/or secret information, the sanction of dismissal was too harsh, under circumstances where that has never been an issue between the parties.

3.9. The Court erred in failing to appreciate that it was not the employee's case that there was no rule against discussing salary issues with other employees under the circumstances where the employee's version was merely that she did not know that rule.

3.10. The Court erred in concluding that the arbitrator's finding in respect of Charge 2 was reasonable considering the evidence before him under circumstances where there was no such finding to be reasonable or otherwise.

The test for leave to appeal

[4] The test for leave to appeal is not there for the taking. It is a stringent test. Section 17(1) of the Superior Courts Act[2] provides that:

'Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a)(i) the appeal would have reasonable prospect of success.'

[5] In *MEC Health, Eastern Cape v Mkhitha and Another*[3], the SCA held that:

'[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal.'

Evaluation

[6] On all the grounds for leave to appeal submitted by the applicant, the applicant failed to establish that there are reasonable prospects of success on appeal. A regurgitation of authorities does not come close to showing that the applicant has reasonable prospects of success on appeal. There was therefore no sound, rational basis that the applicant has reasonable prospects of success on appeal.

[7] The arbitrator did not commit gross irregularity in the proceedings. This Court did not make any finding that the arbitrator committed gross irregularity. The outcome reached by the arbitrator was not unreasonable. As it was indicated in *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)*[4], the SCA held that a material error of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are of any consequence if their effect is to render the outcome unreasonable.

- [8] A material error by the arbitrator in not making a finding in respect of charge 2 does not in itself make the outcome unreasonable. A finding on procedure by the arbitrator was an irregularity, but it was not a gross irregularity, especially taking into account that there was no evidence adduced by the parties in respect of the procedure.
- [9] Consequently, the applicant's application for leave to appeal failed to meet the stringent test set out in section 17(1) of the Superior Court's Act, and the application must be dismissed.
- [10] In the premises, the following order is made:

Order

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

H. Molotsi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr G. Kirchmann

Instructed by: Kirchmanns Inc

For the Respondent: Ms N. Luthuli

Instructed by: NUMSA

- [1] Act 75 of 1997.
- [2] Act 10 of 2013.
- [3] 2016 ZASCA 176 at para 17.
- [4] (2013) 34 ILJ 2795 (SCA); [2013] 11 BLLR 1074 (SCA) at para 25.

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