

SOUTH AFRICA / JUDGMENT

Taole v Impala Platinum Ltd and Others (JR 822/15) [2021] ZALCJHB 222 (10 August 2021) [2021] ZALCJHB 222

COURT

Labour Court Johannesburg

BEFORE

Mthombeni

CASE / FILE NUMBER

JR 822/15

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IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case no: JR 822/15

Case no: JR 769/15

Case no: JR 974/15

In

the matter between:

RETSELISITSOE
LEHLOHONOLO
TAOLE Applicant
and
IMPALA
PLATINUM
LTD First
Respondent
COMMISSIONER
BONGE MASOTE N.O. Second
Respondent
COMMISSION
FOR CONCILIATION
MEDIATION
AND
ARBITRATION Third
Respondent
Considered: In
chambers

Delivered: 10
August 2021 (via email)

JUDGMENT

MTHOMBENI, AJ

Introduction

[1] This is an application for Leave to Appeal against my judgment which was delivered on 10 May 2017. The application is opposed.

Brief

background

[2] In the main application the first respondent had sought the ruling made on 22 April 2015 by the second respondent be reviewed and set aside and further that the arbitration award under case number GAJB 19923-14, dated 5 May 2015 be reviewed and set aside. I also considered the appellant's application to make the arbitration award an order of the court.

[3] In the arbitration hearing the second respondent had made a ruling dismissing the first respondent's application for a postponement in that, inter alia, Thami Mvumbi (Mvumbi), its representative, and its witnesses were not available.

[4] Having considered the parties' submissions following orders were made:

4.1 the ruling made on 22 April 2015 by the commissioner is reviewed and set aside;

4.2 the arbitration award under case number GAJB 19923-14, dated 5 May 2015 and made by the commissioner, is consequently set aside;

4.3 the dispute is remitted to third respondent to be heard de novo before a commissioner other than the second respondent; and

4.4 the application to enforce the arbitration award is dismissed.

4.5 In its application for Leave to Appeal the appellant seeks leave to appeal against the judgment delivered on 10 May 2017 and that any party that acted on behalf of the first respondent in the course of the review applications in this Court is joined jointly and/or severally as respondent parties in these proceedings.

Subsequent developments

[5] The matter was remitted to the third respondent as per the judgment. At a subsequent arbitration hearing, the appellant's dismissal was found to have been procedurally and substantively unfair and the first respondent was ordered to pay the appellant compensation.

- [6] Dissatisfied with the arbitration award, the appellant made an application, under case number JR2647/17, for the reviewing and setting aside of the arbitration award.

Ground of appeal

- [7] The applicant submits that the arbitration award had been improperly obtained in that Mvumbi had no right to represent the first

respondent at the arbitration proceedings as he was neither an employee nor a director of the first respondent.

Applicable rules and legal principles

- [8] Rule 9 (2) of the Rules for the Conduct of Proceedings in the Labour Court (the Rules) provides that the notice of appeal must be filed within ten days of the date on which the person filing the notice of appeal is notified of the decision that is the subject of appeal.
- [9] The application is thus, late. In this regard, the appellant has made an application for condonation. I shall not make a ruling on such application for reasons I shall state below.
- [10] Rule 9(4) states further that the notice of appeal must set out the particulars of the decision that is the subject of appeal[1];the findings of fact that are appealed against[2];and the conclusions of law that are appealed against[3].
- [11] It is not clear from the application what is sought to be appealed against in the judgment. Furthermore, the appellant's ground of appeal concerns an issue which was not raised at the review proceedings and which was not considered in the judgment.
- [12] For these reasons , the application does not comply with Rule 9.
- [13] This notwithstanding, when the appellant participated in the remitted arbitration proceedings, he waived his right to appeal, thereby
- complying with the judgment he seeks to appeal against.
- [14] It is trite that according to the principle of peremption a Court will not entertain an appeal by a party who has already complied with the

judgment.

- [15] In *Dabner v SA Railways and Harbours*[4] the Court stated:

“If the conduct of an unsuccessful litigant is such as to point indubitably and necessarily to the conclusion that he does not intend

to attack the judgment, then he is held to have acquiesced in it.”

- [16] 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

Mthombeni AJ

Acting Judge of the Labour Court of South Africa

- [1] Rule 9(4)(a).
- [2] Rule 9(4)(b).
- [3] Rule 9(4)(c).
- [4] 1929 AD 583 at 594.

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Prepared on 13 October 2026 · Esheria