

SOUTH AFRICA / JUDGMENT

Tshani and Others v DHL Supply Chain South Africa (Pty) Ltd (J132/22)

[2022] ZALCJHB 151 (30 May 2022)

[2022] ZALCJHB 151**COURT**

Labour Court Johannesburg

BEFORE

Tlhotlhemaje

CASE / FILE NUMBER

J132/22

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Source record**IN****THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not****reportable****Case****No: J 132/22****In****the matter between:**

HLAMULANI
TSHANI
First Applicant
DANIEL
MOGOTLANE
Second Applicant
RANKO
NQOEPE
Third Applicant
ALPHEUS
NDLOZI
Fourth Applicant
THEMBA
TOYI
Fifth Applicant
SIBUSISO
NKOSI
Sixth Applicant
GORDON
RAMOTHIBE
Seventh Applicant

NKOSINATHI
MBAMBO
Eight Applicant
And
DHL
SUPPLY CHAIN SOUTH AFRICA (PTY) LTD
Respondent

Heard: Considered in chambers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 30 May 2022 at 13:00

RULING

– APPLICATION FOR LEAVE TO APPEAL

TLHOTLHALEMAJE, J

[1] In this application, the applicants seeks leave to appeal against the whole judgment and order of this Court issued on 13 March 2022.

The application is opposed by the respondent. In its judgment, the Court had declined to grant the applicants' application in terms of section 189A(13) of the Labour Relations Act[1] (LRA).

[2] The leave to appeal is premised inter alia on the grounds that the Court had in its judgment, conflated the issue on urgency as provided for in terms of section 189A of the LRA in contrast to those provided for in terms of rule 8 of the Rules of this Court. The contention is that the Court failed to appreciate that the urgency in applications in terms of section 189A of the LRA are empowered by statute and are sui generis, and thus ought not to be considered within the context of rule 8 of the Rules.

[3] This is so since the requirements of rule 8 of the Rules requires the applicant to demonstrate inter alia irreparable harm and the non-availability of alternative relief in due course. This is also in circumstances where the provisions of section 189A(13) of the LRA simply provide for the timeframes for the filing of the application, and afford the Court a discretion to abridge the prescribed timeframes upon the demonstration of good cause. Moreover, the contention was that the Court was not alive to the fact that matters in terms of the provisions of section 189A(13) of the LRA are enrolled on the urgent roll for mere convenience and not for the purposes of substance in contrast to the applications in terms of rule 8 of the Rules.

- [4] The applicants further contended that the Court erred in its calculation of the applicants' period of lateness in instituting the application in terms of section 189A(13) of the LRA. They further contend that the Court erred in its inquiry on good cause, since persuasive reasons for condonation were provided, and furthermore since they had demonstrated good prospects of success in the main application. The applicants further contended that the Court erred in its conclusions that the applicants had an alternative

relief in a hearing in due cause. This is so since the provisions of section 189A of the LRA has withdrawn the jurisdiction of this Court to adjudicate the procedural issues once the facilitation processes have been concluded.

- [5] The contention is that at issue in the urgent proceedings before this Court was the utilisation of race as a selection criterion. The applicants asserted that they had been fraudulently misled into concluding a settlement agreement and further that fraud would ordinarily vitiate any agreement.
- [6] The applicants further complained about a costs order made against them, in circumstances where they had reasonable prospects of success in respect of the substantive fairness dispute. The contention was further that the Court failed to take into account the Constitutional Court's jurisprudence on the issue of costs, in that costs do not as a general rule follow the results.
- [7] The principles to be considered in respect of applications for leave to appeal have been codified in terms of section 17(1) of the Superior Court Act[2] and entails an assessment of whether or not there are reasonable prospects that another Court would come to a different conclusion in respect of the factual matrix of the matter. The application for leave to appeal could further be granted in circumstances where the Court is of the opinion that there are other compelling reasons why the appeal would be heard, including inter alia conflicting judgments on the same subject-matter.
- [8] Given the legal framework of section 189A(13) of the LRA and how it had been interpreted by the Constitutional Court and this Court in the authorities as referred to in the main judgment, it must be stated that the applicants in these proceedings do not say much in demonstrating how the Court could in the light of the facts and circumstances that were before it, have exercised its supervisory powers. This was in circumstances where the facilitation processes had been concluded, more specifically in accordance with the mutual separation agreement. It is common cause that the agreement remains in force and binding and moreover that there are no pending actions in relation to that agreement, other than the application in terms of section 189A of the LRA which was disposed of by this Court. The net effect of the separation agreement between the parties is the resolution of the retrenchment dispute between the parties. It is therefore difficult to understand on what basis the applicant could in turn dispute a process which had been resolved through an agreement, let alone approach the Court on an urgent basis in that regard.

[9] In respect of the other grounds of leave to appeal, I am equally not convinced that there are reasonable prospects that another Court would come to a different conclusion than reached by this Court in its judgment. The basis upon which a costs order was made against the applicant has been set out in the main judgment and it is not necessary to repeat same. In the end however, the application for leave to appeal and the grounds in that regard do not at all raise novel issues either of law or fact, that deserves the attention of the LAC. In such circumstances, the application for leave to appeal falls to be dismissed.

[10] Accordingly, the following order is made;

Order:

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

Edwin Tlhotlhamajje

Judge of the Labour Court of South Africa

[1] Act 66 of 1995, as amended

[2] Act 10 of 2013

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