

SOUTH AFRICA / JUDGMENT

Pudi v Tshwane University of Technology (JS 801/17) [2022]

ZALCJHB 211 (10 August 2022)

[2022] ZALCJHB 211

COURT

Labour Court Johannesburg

BEFORE

Mahosi

CASE / FILE NUMBER

JS 801/17

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JS 801/17

In

the matter between:

THABO

ISRAEL

PUDI

Applicant

and

TSHWANE

UNIVERSITY OF TECHNOLOGY

Respondent

Decided:

In Chambers

This

judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is

deemed to be 10 August 2022.

JUDGMENT

- LEAVE TO APPEAL

MAHOSI, J

Introduction

[1] The applicant brought an application for leave to appeal against the whole judgment of this Court that was handed down on 03 June 2022, in terms of which the Court dismissed his application to reinstate a matter he had withdrawn with no order as to costs.

[2] The respondent opposed the application.

Grounds for leave to appeal

[3] The applicant submitted, in his notice of application for leave to appeal, that the basis on which he brought this application was that the Court erred in the following respect:

3.1 Applying the test for condonation and/or test for retrieval of an archived file to determine whether or not the application for reinstatement should be granted.

3.2 Considering the prospect of success and the explanation for the delay. In this regard, the applicant referred the Court to the judgment in *Ellies Electronics (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[1] (*Ellies Electronics*).

3.3 Finding that, if the application is granted, the prejudice to be suffered by the respondent would outweigh that of the applicant.

3.4 Advancing prescription as a ground not to grant the application, whilst it was not raised as a defence by the respondent in its papers.

[4] In his submission filed in terms of Rule 30(3A) of the Rules[2] and Clause 15.2 of the Practice Manual of the Labour Court[3], the applicant submitted that upon re-consideration of the judgment, he abandoned the ground on prescription as the Court did not advance prescription as a reason for the refusal of his application.

[5] The applicant further submitted that the Court erred in dismissing his application. Furthermore, the applicant submitted that had the Court applied the correct test, his application would have been granted with costs because he was entitled to bring an application for reinstatement, inter alia, to avoid the delay occasioned by the reissuing of papers and that there was no evidence in the respondent's affidavit that

enabled the Court to find that it would suffer any prejudice if the application was granted. In this regard, the applicant referred the Court to the judgment in *Robor Tube (Pty) Ltd v MEIBC and Others*[4].

The respondent's

submissions

- [6] In opposition, the respondent submitted that the Court did not err in dismissing the applicant's reinstatement application and further that the Court correctly referred to the recent case of *Ellies Electronics*, which confirmed the principle that the withdrawal of a matter is akin to an order for absolution from the instance and that if a matter had been withdrawn, the applicant has to re-institute its claim by way of fresh proceedings (anew) to be adjudicated on the merits, for as long as the *causa* had not been extinguished due to a settlement.
- [7] Furthermore, the respondent submitted that the Court correctly relied on the judgment in *Samuels v Old Mutual Bank*[5], which sets out the factors to be considered in determining a reinstatement application, which is akin to a condonation application as confirmed by the Labour Appeal Court (LAC).
- [8] It is the respondent's further submission that the applicant misconceived the test which the Court applied and that the Court was correct in finding that the period of delay was excessive and that the explanation was insufficient and unsatisfactory as it does not cover the entire period of delay. For the above reasons, the respondent prayed for the application to be dismissed with costs.

The test for leave to appeal

- [9] In terms of section 166(1) of the Labour Relations Act (LRA),[6] a party to proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the LAC against any final judgment or final order of the Labour Court. Section 17 of the Superior Court Act,[7] which applies to the Labour Court, regulates instances in which the appeal may be granted. Section 17(1) provides as follows:

'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] Section 16(2)(a) of the Superior Court Act provides as follows:

‘(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.

(ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.’

[11] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*,^[8] the LAC made it clear that leave to appeal is not simply there for the taking, and that this Court must be cautious in granting leave to appeal and in assessing the requirement of the prospect of success. In this case, the Court stated as follows:

‘...The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the court a quo, need to be cautious when leave to appeal is granted, as should this Court when petitions are granted.

There are two sets of interests to consider. There are the interests of the parties such as appellant, who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to a different conclusion. There are also the rights of employees who land up in a legal “no-man’s-land” and have to wait years for an appeal (or two) to be prosecuted.

This was a case which should have ended in the Labour Court. This matter should not have come to this court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.’

[12] In determining whether to grant an application for leave to appeal, the traditional test is whether there is a reasonable prospect that another court may come to a different conclusion.^[9]

[13] Having had regard to the submissions from both parties, I find that there is no merit in the applicant’s submissions. As such, I am not persuaded that there are reasonable prospects that another Court could come to a different conclusion. As such, his application ought to be dismissed.

[14] Accordingly, the following order is made:

Order

1. The application for leave to appeal is dismissed.

2. There is no order as to costs.

D. Mahosi

Judge of the Labour Court

[1] Unreported judgment under case no: JA74/2018 delivered on 24 June 2020.

[2] GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

[3] Effective, 1 April 2013.

[4]

(2018) 39 ILJ 2332 (LC).

[5]

[2017] 7 BLLR 681 (LAC) at para 17.

[6] Act 66 of 1995, as amended.

[7] Act 10 of 2013.

[8] (2014) 35 ILJ 2399 (LAC) at 2405I-2406E.

[9] See: Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and others

(1999) 20 ILJ 2889 (LC) at 2890B; Ngcobo v Tente Casters (Pty) Ltd (2002) 23 ILJ 1442 (LC) at para 2; and Tsotetsi v Stallion Security (Pty) Ltd (2009) 30 ILJ 2802 (LC) at para 14.

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Prepared on 13 October 2026 · Esheria