

SOUTH AFRICA / JUDGMENT

Mogale and Another v National Health Laboratory Services (Application for Leave to Appeal) (JS 958/2019) [2024] ZALCJHB 21; (2024) 45 ILJ 817 (LC) (31 October 2024)

[2024] ZALCJHB 21

COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

JS 958/2019

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JS 958 /2019

In the matter between:

JOYCE MOGALE First Applicant MASELLO JOHANNA NNAMOKGWANE ZULU (In her capacity as the executrix of the estate of the late SIKHUMBUZO ZULU) Second Applicant and THE NATIONAL HEALTH LABORATORY SERVICES Respondent

Decided: In Chambers

Judgment:

31 October 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 31 October 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J

[1] The First Applicant applied for leave to appeal against the judgment and orders, delivered on 13 September 2024.

- [2] The First Applicant raised several grounds for leave to appeal and filed lengthy submissions in support of her grounds for appeal.
- [3] I have considered the grounds for appeal, upon which leave to appeal is sought, as well as the submissions made in support and in opposition thereof. Both parties filed comprehensive submissions, which I have taken time to peruse and consider and I do not intend to repeat those herein.

The test for leave to appeal

- [4] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act[1] (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. To be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court would come to a different conclusion.[2]
- [5] The test is not whether there is a possibility that another court could come to a different conclusion, the test is whether there is a reasonable prospect that another court would come to a different conclusion.
- [6] It is further trite that an applicant in an application for leave to appeal must convince the court a quo that it has reasonable prospects of success on appeal. Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.
- [7] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*,[3] this Court confirmed that the test applicable in applications for leave to appeal is stringent and held as follows:

‘The traditional formulation of the test that is applicable in an application such as the present requires the court to determine

whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. As the respondents observe, the use of the word “would” in s17(1)(a)(i) is indicative of a raising of the threshold since previously, all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd and another* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin and*

East (Pty) Ltd v NUM (2014) 35 ILJ 2399 (LAC), and also Kruger v S 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp J in Oasys Innovations (Pty) Ltd v Henning and another (C 536/15, 6 November 2015).’

[8] In deciding this application for leave to appeal, I am also guided by the dicta of the Supreme Court of Appeal where it held in Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others^[4] that:

‘...The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should in this case have been deployed by refusing leave to appeal.’

This application

[9] I have considered the submissions made in support of the grounds for appeal and applying the applicable test, I am not convinced that the First Applicant has made out a case for leave to appeal to be granted.

[10] There is not a reasonable prospect that the factual matrix would receive a different treatment by the LAC or that the LAC would come to a different conclusion. This is more so in view of the material admissions Ms Mogale made during her testimony. The First Applicant did not make out a case that the order, judgment or findings are wrong in fact or law because of a material misdirection.

Conclusion

[11] Applying the applicable test, I am not convinced that the First Applicant has made out a case that passed the test and the high threshold of a reasonable prospect that another court would come to a different conclusion.

[12] In the premises, I make the following order:

Order

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

Connie Prinsloo

Judge of the Labour Court of South Africa

[1] Act 66 of 1995, as amended.

[2] See Woolworths Ltd v Matthews [1999] 3 BLLR 288 (LC).

[3] (2016) 37 ILJ 1485 (LC) at para 3.

[4] 2013

(6) SA 520 (SCA) at para 24.

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