THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 2125 / 13

In the matter between:

LIFE REUBEN MALULEKE **Applicant**

and

UNIVERSITY OF VENDA **First Respondent**

C A MANNDE N.O (AS ARBITRATOR) **Second Respondent**

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION **Third Respondent**

Heard: **Considered in Chambers**

Delivered: **16 May 2017**

Summary: **Application for leave to appeal – no proper case for leave to appeal made out – application dismissed with costs**

JUDGMENT

SNYMAN, AJ

Introduction

[1] The current applicant for leave to appeal was the first respondent in a review application brought by the current first respondent in this application (University of Venda), in this Court, seeking to review and set aside an arbitration award made by the second respondent in his capacity as an arbitrator of the Commission for Conciliation, Mediation and Arbitration ('the third respondent'). The current applicant had instituted a cross review application.

[2] Both the main review application and cross review was argued before me on 16 September 2016 by both the applicant and first respondent, and in a written judgment handed down on 28 February 2017, I upheld the first respondent's review application, reviewed and set aside the arbitration award of the second respondent, and substituted such award with a determination that the applicant's dismissal was substantively fair. Consequently, I then also dismissed the applicant's cross review application.

[3] On 15 March 2017, the applicant then filed an application for leave to appeal. In a written direction to the parties on 30 March 2017, both parties' attention was drawn to the provisions of clause 15.2 of the Practice Manual, and the parties were directed to file written submissions in terms thereof. Despite this directive, none of the parties have filed written submissions.

[4] Clause 15.2 of the Practice Manual provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason why the application for leave to appeal needs to be dealt with in open Court, and I shall therefore determine the applicant's leave to appeal application in chambers.

[5] To further compound the difficulties, and on 10 November 2015, my associate gave written notice to the first respondent, referring it to clause 15.2 of the Practice Manual. In terms of clause 15.2, the first respondent, as applicant in the leave to appeal application, had to file written submissions within 10 days. No such submissions were ever forthcoming. The first respondent has thus not complied with the Practice Manual as well.

Non compliance with the Practice Manual

[6] As touched on above, and in terms of clause 15.2 of the Practice Manual, the applicant in a leave to appeal application is required to file written submissions in support of the application for leave to appeal within 10(ten) days of filing the application for leave to appeal. No such submissions were ever forthcoming from the applicant, despite also being directed to do so.

[7] In *Ralo v Transnet Port Terminals and Others*[1] the Court said

> '…. The Practice Manual contains a series of directives, which the Judge President is entitled to issue. In essence, the manual sets out what is expected of practitioners so as to meet the imperatives of respect for the court as an institution, and the expeditious resolution of labour disputes (see clause 1.3). While the manual acknowledges the need for flexibility in its application (see clause 1.2), its provisions are not cast in the form of a guideline, to be adhered to or ignored by parties at their convenience.'

[8] Considering that a Judge is entitled, in terms of the Practice Manual, to decide a leave to appeal application in chambers based on written submissions, the failure to file written submissions in these instances may be viewed to be similar to a party failing to appear in Court to argue the case, and all the consequences associated with it, which may include dismissing the application on this basis alone. But at the very least, this failure by the applicant leaves the leave to appeal application unmotivated.

[9] In my view, the applicant's failure to file written submissions despite the clear provisions of the Practice Manual and despite being called on to do so, should lead to the dismissal of the application for leave to appeal for this reason alone. However, and for the sake of being complete, I will nonetheless consider the merits of the application for leave to appeal, on the basis of the grounds advanced by the applicant in the application for leave to appeal.

[1] (2015) 36 ILJ 2653 (LC) at para 9. See also *MJRM Transport Services CC v Commission for Conciliation, Mediation and Arbitration and Others* (2017) 38 ILJ 414 (LC) at paras 12 – 13; *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and Others* (2014) 35 ILJ 1672 (LC) at para 11.

Leave to appeal

[10] In deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another Court may come to a different conclusion to that of the Court *a quo*.[2]

[11] Recently, and in *Seathlolo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[3] the Court again considered the above test for leave to appeal and held:

> '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. … 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 …'

[12] As a general proposition, the applicant's grounds for seeking leave to appeal are in essence nothing more but the applicant disagreeing with the conclusions I came to, especially where it came to the evidence and the relevant provisions of law. To merely disagree with my conclusions does not establish a reasonable prospect of another Court coming to a different conclusion as envisaged by the test in considering an application for leave to appeal. The applicant has simply made out no proper case in this regard, and considering that this matter dates back to 2013, the following *dictum* from the judgment in *Martin & East (Pty) Ltd v National Union of Mineworkers and Others*[4] is apposite:

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[2] See *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 ILJ 95 (CC) *; Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC); *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC); *Volkswagen SA (Pty) Ltd v Brand NO and Others* (2001) 22 ILJ 993 (LC); *Singh and Others v Mondi Paper* (2000) 21 ILJ 966 (LC); *Glaxo Welcome SA (Pty) Ltd v Mashaba and Others* (2000) 21 ILJ 1114 (LC).
[3] (2016) 37 ILJ 1485 (LC) at para 3.
[4] (2014) 35 *ILJ* 2399 (LAC) at 2405J-2406A

> '… I indicated that the events in this case took place in 2010. 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.'

[13] The applicant has also just once again repeated virtually the same arguments in the application for leave to appeal, that he advanced when arguing the matter before me on the merits. I still remain unconvinced that these arguments have substance. I remain equally unconvinced that there exists any reasonable prospect that another Court could come to a different conclusion, on these arguments.

[14] The applicant has failed to address several of the pertinent legal principles I dealt with in my judgment, especially those relating to the credibility of witnesses and how evidence must be assessed in cases of sexual harassment. In my view, there is no reasonable prospect of another Court, in the light of these clear legal principles, could come to a conclusion different to the one I came to.

[15] I thus conclude that the applicant, overall, has shown no reasonable prospect that another Court could come to a different conclusion, and the leave to appeal application must fail.

[16] As to costs, the first respondent did not engage in the application for leave to appeal, and also did not file written submissions. For these reasons, I will make no costs order in respect of the application for leave to appeal

Order

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

1. The applicant's application for leave to appeal is dismissed.

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S Snyman

Acting Judge of the Labour Court

Appearances:

For the Applicant: In person

For the First Respondent: Bowman Gilfillan Attorneys