THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J566/24

In the matter between:

BRENDAN NKAMBULE Applicant

and

GENERAL INDUSTRIES WORKERS UNION OF SOUTH AFRICA Respondent

Heard: Considered on paper

Delivered: 18 November 2024

Summary:

Application for leave to appeal decided in chambers. The application for leave to appeal dismissed.

JUDGMENT: LEAVE TO APPEAL

DANIELS J

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Introduction

[1] The applicant, a former employee of the respondent, brought a claim for outstanding wages. The application was unopposed. I heard the matter on 4 June 2024 and granted an order directing the respondent to pay the outstanding wages in the amount of R29 360, 00.

[2] On 17 July 2024, the respondent filed a notice of application for leave to appeal. The notice of application for leave to appeal was late. It ought to have been filed within 15 days of the order, by 25 June 2024, in accordance with the Rules. It was not accompanied by an application for condonation. For this reason alone, the application falls to be dismissed. Nevertheless, I briefly consider the application itself.

Application for leave to appeal

[3] The respondent states that the court erred by not confirming that the notice of set down had been sent to it. This does not assist the respondent given that it does not state that the notice was not received by it.

[4] The respondent submits that the dispute should have been referred to oral evidence because there was a dispute as to whether the applicant was in fact owed any wages. The respondent did not appear, nor did it request that the matter be referred to oral evidence. The court papers revealed no genuine dispute of fact which required oral evidence.

[5] The respondent alleges that it will be prejudiced because the applicant was not employed by the Pretoria Branch. Instead, says the respondent, the applicant was employed by the Germiston Branch. With respect, I fail to understand how this assists the respondent. The respondent does not allege that it did not employ the applicant.

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Legal Principles

[6] In *J & L Lining (Pty) Ltd v National Union of Metalworkers of South Africa and others (2)*[1] this Court summarized the legal position when seeking leave to appeal as follows: *"Leave to appeal is not there for the asking. When deciding whether to grant leave to appeal … the Labour Court must determine whether there is a reasonable prospect that another court would come to a different conclusion to that of the court a quo, or in other words, whether the appeal would have a reasonable prospect of success. This was summarised in SA Clothing & Textile Workers Union & others v Stephead Military Headwear CC, as follows: 'It is trite that for an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court, in this instance, the Labour Appeal Court, would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal*.''

(Own emphasis)

[7] As to the meaning of 'reasonable prospects of success', the Court in *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another*[2] said the following: "*Once again it is* necessary *to say that leave to appeal, especially to this Court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard. An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere*

[1] (2019) 40 ILJ 1303 (LC) at para 5.

[2] [2016] JOL 36940 (SCA) at paras 16 – 17.

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possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

Analysis

[8] The respondent has not set out its basis for leave to appeal with anything approaching clarity. The application is devoid of merit, and in many instances not easily capable of being understood.

[9] If the respondent believes that it was entitled to notice of the set down, and it did not receive the set down, it should have brought an application to rescind the order taken by default.

[10] In the circumstances, there is no basis to grant leave to appeal. The applicant falls to be dismissed.

Conclusion

[11] The application is dismissed.

R Daniels

Judge of the Labour Court of South Africa

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