THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS202/21

In the matter between:

GOLD PLAT RECOVERY (PTY) LTD Applicant

and

AMCU OBO MALULEKE AND 4 OTHERS Respondents

Heard: Considered in Chambers

Delivered: 28 November 2024

JUDGMENT: LEAVE TO APPEAL

DANIELS J

Introduction

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[1] On the first day of trial, 13 May, the applicant advised the court of its intention to call a single witness (Mr AC Soldatos) whose evidence would largely be hearsay. Following argument, the court ordered that hearsay evidence would be excluded. An order with full reasons was delivered later that same day. The trial was concluded on 17 May, and judgment handed down on 29 July. The applicant seeks leave to appeal. Though applicant states that it seeks leave to appeal against the judgment of 29 July, it attacks only the judgment of 13 May.

Condonation

[2] The applicant contends that its application for leave to appeal is not late, because it was brought within 15 days of the judgment of 29 July. The applicant applies for condonation only insofar as it is necessary. I accept that it was prudent for the applicant to await the outcome of the trial before deciding whether to appeal. If the applicant had sought leave to appeal earlier, this would likely have been opposed on the basis that it is undesirable to hear such an appeal in *media res*.

[3] I accept there is a reasonable explanation for the delay. I have considered the other factors relevant to condonation, including matters such as prospects of success, prejudice, and the interests of justice. On a conspectus of all the relevant factors, it is in the interests of justice to grant condonation. The late filing of the application for leave to appeal is condoned.

Leave to appeal

[4] In short, the applicant submits that the court erred by failing to allow it an opportunity to present evidence in order to lay a basis for the admission of hearsay evidence.

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Legal principles

[5] Section 17(1) of the Superior Courts Act No. 10 of 2013 provides that leave to appeal may only be given where the judge is of the opinion that the appeal *would* have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard. Leave to appeal should not be granted unless there is a sound and rational basis to conclude that there is a reasonable prospect of success.[1] In *Martin & East (Pty) Ltd v National Union of Mineworkers & others*[2] the court, per Davis JA stated:

> "*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*." (Own emphasis)

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[1] *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] JOL 36940 (SCA) at paras 16 – 17

[2] (2014) 35 ILJ 2399 (LAC) at 2406

Analysis

[6] I do not intend to address all the issues raised. In my view, the application for leave to appeal is flawed for the following reasons:

6.1 The court did not deny the applicant an opportunity to present any evidence. Despite being represented by an experienced legal team, applicant made no request to present any evidence before arguing for the admission of hearsay evidence.

6.2 During argument, the court alerted the applicant to the difficulties it faced in determining whether witnesses (who were allegedly fearful) had proper reasons for refusing to testify.

6.3 Furthermore, during argument, the court advised the applicant of its right to apply for the hearing of evidence in camera. Despite this, the applicant brought no such application.

[7] It was necessary to determine the admission of hearsay evidence at the outset of the trial. To do so at the end of the trial would have prejudiced the parties. Our courts have warned against delaying the decision.

[8] The court did not approach the issue with a closed mind, act arbitrarily, capriciously, or on a wrong principle. The court exercised its discretion fairly, after hearing argument. The court cannot be blamed for applicant's election not to bring a formal application, or lead evidence, and instead to make only submissions. It was not for the court to advise the applicant on how to present its case, which would be irregular.

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Conclusion

[9] The application for leave to appeal is dismissed.

RN Daniels
Judge of the Labour Court of South Africa

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