THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C607/2021

In the matter between:

SUGARBERRY CC T/A HORIZON STAFF SOLUTIONS	**Applicant**
and	
THE MOTOR INDUSTRY BARGAINING COUNCIL	**First Respondent**
MR GORDON EDWARD	**Second Respondent**
MIBCO DISPUTE RESOLUTION CENTRE	**Third Respondent**
EMISSION CONTROL TECHNOLOGIES (CAPE TOWN) (PTY) LTD t/a FAURECIA EMISSIONS CONTROL TECHNOLOGIES	**Fourth Respondent**

Decided: In chambers

Delivered: 09 December 2024

JUDGMENT

MAHALELO, AJ

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Introduction

[1] On 14 October 2024, I handed down judgment in this matter dismissing the review application brought by the applicant. The nub of the dispute between the parties was the interpretation of a clause in the collective agreement, namely the interpretation of the phrase "pensionable remuneration". I also made no order as to costs.

[2] This is an application for leave to appeal against the whole of that judgment and order. The application was filed timeously. The first respondent opposed the application. The applicant and the first respondent filed written submissions and the matter was decided on the papers.

The grounds for leave to appeal

[3] Several grounds of appeal on how this Court erred in interpreting the collective agreement were raised in support of this application. It is unnecessary to list them in this judgment. Suffice to mention that the first respondent submitted that those grounds are meritless and should be rejected by the Court.

Test for leave to appeal

[4] Section 17 (1) of the Superior Court Act[1] deals with the relief of leave to appeal. In terms thereof, leave to appeal may only be granted where a judge/s are of an opinion that (a) the appeal "*would"* not "*may"*, have reasonable prospects of success or there are some compelling reasons why the appeal should be heard, including the existence of conflicting judgments on the matter under consideration.

[5] It has been confirmed that the use of the words "*only"* and "*would"* implies that the threshold is set too high to a point where this Court must only give leave in instances where a definitive prospect exists that the appeal would succeed.

[6] The Court in *Nxumalo v National Bargaining Council for the Chemical Industry (NBCCI) and Others*[2] conveniently summarised the approach to an application

[1] Act 10 of 2013.
[2] [2016] ZALCJHB 212 (15 June 2016) at para 3.

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for leave to appeal 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 s 17(1)(a)(i) are 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 (LCA), 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* (C536/15, 6 November 2015).'

Conclusion

[7] I have had regard to the test for leave to appeal and I note that the application brought by the applicant raises issues of interpretation of a clause in the collective agreement which are novel. I have thus concluded that there are reasonable prospects on appeal.

[8] In the circumstances leave to appeal succeeds.

[9] In the premises, the following order is made:

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Order

1. Leave to appeal is granted.

2. Costs shall be costs in the appeal.

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MB Mahalelo

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv PA Mokhobi

Instructed by: Mokhobi P Attorneys Inc

For the Respondent: Senekal Simmonds Inc

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