THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 74/19

In the matter between:

DIRECTOR – GENERAL OF LABOUR DEPARTMENT **First Applicant**

NKOSIFIKILE MALANGABI **Second Applicant**

and

FULL SERVE SERVICES (PTY) LTD **Respondent**

Decided: In chambers

Delivered: 12 December 2024

JUDGMENT – LEAVE TO APPEAL

MAHOMED, AJ

Introduction

[1] This is an unopposed application for leave to appeal against my order handed down on 22 August 2023 which was accompanied by full reasons in a written judgment.

LABOUR COURT

[2] I refer to the parties in this judgment as they are cited in the application for leave to appeal (i.e. as set out in the headers above the tram lines).

[3] The second applicant filed an application for leave to appeal on 28 May 2024. There was no accompanying condonation application for the late filing. The leave to appeal being nine months after the judgement was handed down.

[4] The application for leave to appeal was served on the first applicant and the respondent on 25 May 2024 according to the second applicant's service affidavit. I received the application on 20 June 2024.

[5] This application has been in the Labour Court system since 2019. This is now five years and counting. Over this period, this matter has received judicial attention in the following instances:

5.1. before Tulk AJ in June 2021;
5.2. before Tlhotlhalemaje J in August 2021;
5.3. before Cithi AJ in July 2022;
5.4. before Mahosi J in August 2022; and
5.5. before me in June 2023 which culminated in the judgment of August 2024 which is now the subject of the leave to appeal.

[6] The kernel of this dispute has its genesis in a compliance order issued by the first applicant way back in September 2018 against the respondent under Section 69 of the Basic Conditions of Employment Act[1] (BCEA). What followed was an application in April 2019 by Labour Inspector Bongani Mahlangu for the compliance order to be made an order of this Court. The rest of the history is set out in my judgment and not repeated herein.

[7] On receipt of the application for leave to appeal, I could easily have dismissed the application simply on the basis that it was not accompanied by an application for condonation.

[8] However, having regard to the basis for the leave to appeal, I decided that it was necessary to also provide these further reasons why even if there was an

[1] Act 75 of 1997.

LABOUR COURT

application for condonation, I would in any event have refused leave to appeal as there are no prospects on appeal.

[9] In my judgment of August 2023, I indicated that it was intended that the judgment would bring this matter to rest in the Labour Court. It obviously has not.

[10] Whilst I concluded in August 2023 that the Labour Court had no jurisdiction to entertain the application, I did not simply leave the matter there, I fashioned an order to give direction which was intended to expedite the resolution of the matter pursuant to my order. Despite this, the second applicant saw fit nine months later not to pursue such a path but instead to file an application to seek leave to appeal.

[11] From the application for leave to appeal, it appears that the second applicant is dissatisfied with my order because he takes the view that the first applicant will not give effect to its obligations thereunder. This is not a basis for leave to appeal.

[12] A consideration of the entire application demonstrates that even with the most generous reading, there is no basis made out for leave to appeal. The application does not set out any grounds of appeal in the form of:

12.1. the particulars of the decision that is the subject of the appeal;

12.2. the findings of fact that are appealed against; and

12.3. the conclusions of law that are appealed against.

[13] The second applicant seeks that on appeal 'a new judgement' is issued. This is not a basis for leave to appeal. The test for leave to appeal is trite and need not be repeated save to state that 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]

[2] See: *Woolworths Ltd v Matthews* [1999] ZALAC 34; [1999] 3 BLLR 288 (LC).

LABOUR COURT

[14] This matter is one which falls squarely within the contemplation of the Supreme Court of Appeal in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*[3] where the Court held 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".*

[15] This is not a case deserving of leave to appeal. There is no prospect that another court will come to a different conclusion.

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

Order

1. The application for leave to appeal is dismissed.

2. The Registrar is directed to make a copy of this order available to the first applicant within 3 days of this order.

3. The Registrar is also directed to advise the second applicant that he may approach the SASLAW Pro Bono office to explain to him the terms of the order of 22 August 2024 and this order.

4. There is no order for costs.

_____

I.I Mahomed

Acting Judge of the Labour Court of South Africa

LABOUR COURT

[3] [2013] ZASCA 120; 2013 (6) SA 520 (SCA) at para 24.