THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2743/14

J 2084/16

In the matter between:

QUBEKELA PROJECTS CC **Applicant**

and

MPHAMO MOKOENA **First Respondent**

NTHABISENG NGWANE **Second Respondent**

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION **Third Respondent**

Decided: In Chambers

Delivered: 25 August 2017

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO J.

Introduction

[1] This Court made an order on 1 June 2017 *inter alia* reviewing and setting

aside an arbitration award and rescinding a Court order issued on 2 December 2016 under case number J2084/16.

[2] The First Respondent (Mokoena) subsequently requested reasons for the order, which were delivered on 30 June 2017. Having received the reasons, Mokoena launched this application for leave to appeal.

[3] The application is opposed by the Applicant. Both parties have filed comprehensive submissions in respect of the leave to appeal. I have considered the grounds for appeal as raised by Mokoena as well as the submissions made in support and in opposition thereof and I do not intend to repeat those herein.

The test for leave to appeal.

[4] It is trite that an applicant in an application for leave to appeal must convince the court *a quo* that it has reasonable prospects of success on appeal. What the test requires is the reasonable likelihood that another court, presented with the same facts and evidence as this Court, could come to a different conclusion than the one arrived at by this Court.

[5] Appeals should be limited to matters where there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law.

[6] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[1] this Court confirmed that the test applicable in applications for leave to appeal is stringent and held 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 s17(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]

[1] (2016) 37 ILJ 1485 (LC)

> 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 (LAC), 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* (C 536/15, 6 November 2015)".

[7] In deciding this application for leave to appeal I am also guided by the *dicta* of the Supreme Court of Appeal where it held in *Dexgroup (Pty) Ltd v Trustco Group*[2] 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."

Grounds for leave to appeal

[8] I have read Mokoena's grounds for leave to appeal and having considered those and applying the aforesaid principles applicable to applications such as this one, I am not persuaded that there are reasonable prospects that the Labour Appeal Court would arrive at a different conclusion than that arrived at by this Court. I do not intend to repeat or address all the grounds for appeal raised by Mokoena, but I have considered all of the grounds and in my view they are all without merit. To illustrate that the application for leave to appeal is without merit, I will deal with only one ground for leave to appeal. Mokoena submitted that this Court erred in finding that the arbitrator had to decide the issue of whether Mokoena was indeed an employee first and once that issue was decided, the arbitrator should have heard evidence on the fairness of the

[2] Unreported judgment of the Supreme Court of Appeal (687/12) [2013] ZASCA 120 (20 September 2013)

dismissal. Mokoena's case is that there is no legal basis for this finding. The reality is that the arbitrator made a finding on the fairness of a dismissal, where there was an unresolved dispute as to whether Mokoena was an employee that could be dismissed in the first place and where no evidence was presented on the fairness of the alleged dismissal.

[9] I have dealt in detail with the relevant issues in my judgment and there is no need to repeat what is stated therein for purposes of this judgment. Grounds for leave to appeal and submissions are meant to persuade me that there are reasonable prospects that another court would arrive at a different decision. *In casu* I am not persuaded that there is a case made out for leave to appeal to be granted.

[10] There are no reasonable prospects that the Labour Appeal Court would arrive at a different conclusion than that arrived at by this Court and scarce judicial resources should not be spent on an appeal that lacks merit.

[11] In the result I make the following order:

Order

1. The application for leave to appeal is dismissed.

2. There is no order as to costs.

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Connie Prinsloo

Judge of the Labour Court