



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not reportable

Case no: J 464/20

**COMMUNICATION WORKERS UNION**

**Applicant**

and

**MOBILE TELEPHONE NETWORKS SOUTH AFRICA  
(MTN SA)**

**Respondent**

**Decided: In Chambers**

**Delivered: 28 August 2020**

In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 28 August 2020.

---

**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

---

**PRINSLOO, J**

- [1] The Applicant seeks leave to appeal against the order of this Court granted on 1 June 2020. The Applicant filed its application for leave to appeal on 17 June 2020. In terms of paragraph 15.2 of the Practice Manual of the Labour Court<sup>1</sup> (Practice Manual) a party seeking leave to appeal must file its submissions in terms of Rule 30(3A) of the Rules of the Labour Court within 10 days of filing the application for leave to appeal.

---

<sup>1</sup> Effective 13 April 2013.

- [2] *In casu*, the Applicant has not filed any submissions within the aforesaid prescribed period and absent submissions, the matter was not regarded ripe for adjudication. Surprisingly on 26 August 2020, the Applicant's attorney addressed a letter to the Registrar of this Court, recording that he had not received any communication in respect of the Court's decision on the application for leave to appeal and he asked to be advised on the progress regarding the pending application. This request was brought to my attention and based on the Applicant's attorneys letter, the leave to appeal will be decided without the benefit of written submissions from the Applicant.
- [3] The Respondent filed written submissions in terms of Rule 30(3A) of the Labour Court Rules.
- [4] I have considered the grounds for appeal as well as the submissions made in opposition thereof and I do not intend repeating those herein.

#### The test for leave to appeal

- [5] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act<sup>2</sup> (LRA) which provides that any party to any proceedings before the Labour Court may apply for leave to appeal to the Labour Appeal Court (LAC) against any final judgment or final order of the Labour Court. In order to be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court could come to a different conclusion"<sup>3</sup>.
- [6] The test is not whether or not there is a possibility that another court could come to a different conclusion, the test is whether or not there is a reasonable prospect that another court would come to a different conclusion.
- [7] It is further 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. 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.

---

<sup>2</sup> Act 66 of 1995 as amended.

<sup>3</sup> See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

- [8] In *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*<sup>4</sup> 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] 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)’.

- [9] In deciding this application for leave to appeal, I am also guided by the *dicta* of the Supreme Court of Appeal (SCA) where it held in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*<sup>5</sup> 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.’

#### This application

- [10] I have considered the submissions made in opposition of the grounds for appeal and applying the applicable test, I am not convinced that the Applicant

<sup>4</sup> (2016) 37 ILJ 1485 (LC) at para 3.

<sup>5</sup> 2013 (6) SA 520 (SCA) at para 24.

has made out a case that could be considered as passed the test and the high threshold of a reasonable prospect that another court would come to a different conclusion.

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

Order

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

---

Connie Prinsloo

Judge of the Labour Court of South Africa