



**REPUBLIC OF SOUTH AFRICA**

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

**JUDGMENT**

**Not reportable**

**Case no JR 1656/12**

In the matter between:

**P A MAHLAKE**

**APPLICANT**

and

**GENERAL PUBLIC SERVICE SECTORAL**

**BARGAINING COUNCIL**

**1<sup>ST</sup> RESPONDENT**

**AC MAANDE**

**2<sup>ND</sup> RESPONDENT**

**DEPARTMENT OF SPORTS, ARTS & CULTURE**

**LIMPOPO PROVINCE**

**3<sup>RD</sup> RESPONDENT**

**Application heard: 21 February 2014**

**Ruling issued: 24 February 2014**

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**RULING: APPLICATION OF LEAVE TO APPEAL**

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**VAN NIEKERK J**

- [1] This is an application for leave to appeal against the whole of the judgment delivered by this court on 17 January 2014. In its judgment, the court dismissed, with no order as to costs, an application to review and set aside an arbitration award made by the second respondent. In his award, the second respondent (the commissioner) had upheld the fairness of the dismissal of the applicant by the third respondent.
- [2] The reasons for judgment are recorded in the written judgment delivered by the court, and I do not intend to repeat them here. At the hearing of the present application, Adv. Cook, who appeared for the applicant, emphasized four submissions. These relate to the severity of the sanction of dismissal, the consistency argument (it having been contended that at least two other employees were guilty of the same misconduct but not dismissed), the related contention that the applicant was the scapegoat for misconduct committed by others and the submission concerning the applicant's understanding of an exemption in relation to certain payments and the requirement that an approval and/or tender process be invoked.
- [3] Leave to appeal is ordinarily granted if there are reasonable prospects that another court, in this case the Labour Appeal Court, may come to a different conclusion.
- [4] in relation to sanction, it is pointed out in the judgment that the consequence of the approach adopted in the *Sidumo* judgment and its subsequent refinement by the Supreme Court of Appeal in *Herholdt* and by the Labour Appeal Court in *Goldfields* is to narrow considerably the basis on which this court is entitled to interfere with a commissioner's finding on a fair sanction for misconduct. The effect of the test, which requires a commissioner's decision that dismissal is appropriate to be so unreasonable that it falls outside of the band of decisions to which reasonable people could come on the available material, is that this court

will not often be entitled to interfere. In the present instance, the commissioner in paragraph 50 of the award clearly takes into account the relevant factors and concludes that the absence of any remorse and the fact that the applicant, despite the evidence, simply continue to believe that she had done no wrong warranted the upholding of the applicant's dismissal. As I indicated in the judgment, there is no reason to call into question the commissioner's conclusion that the acts of financial mismanagement committed by the applicant warranted the sanction of dismissal. Nothing that has been presented in the present application persuades me that another court might reasonably think differently.

- [5] Similarly, in regard to the consistency and scapegoat arguments, the commissioner was alive to the applicant's averments that other employees were equally guilty of financial mismanagement. The commissioner rejected these arguments as a basis on which the applicant should be exculpatory it and relying on the evidence of Knevitt in particular, concluded that whatever the conduct of others, the applicant was responsible for the budget being exceeded by some R 2.7 million. The fact that one either employee implicated by the forensic reported resigned and another been transferred could not serve to exculpate the applicant, and other commissioner quite reasonably rejected this proposition.
  
- [6] The applicant also submits in the present application that her state of mind and in particular, her belief that the exemption obtained in respect of services for goods exceeding R 30 000 was sufficient to relieve her of any obligations in respect of the regulatory thresholds of R 100 000 and R1 million respectively, is an issue that the commissioner failed properly to take into account, as the commissioner failed properly to have regard to her contention that she was the victim of a political conspiracy. Again, it is the function of this court to determine whether or not the commissioner was correct. Commissioners are allowed to be wrong. As I've indicated in the judgment, provided the commissioner provides the parties a fair hearing, understands the nature of the dispute and deals with the substantive merits of that dispute, there is no basis for this court to intervene. Having read the applicants are submits in the present application persuades me that another

court might reasonably conclude that the commissioner failed to discharge the above obligation.

For these reasons I make the following order:

1. Leave to appeal is refused.

ANDRE VAN NIEKERK  
JUDGE OF THE LABOUR COURT

#### APPEARANCES

For the applicant: Adv A Cook, instructed by Koikanyang Inc

For the third respondent: Adv N Cassim SC, instructed by the same attorney.