



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

Case Number: 10037/2020

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

Date 28/05/2021

IMC ACADEMY (PTY) LIMITED

Applicant/Respondent

and

**THE GALLERIA CONFERENCE
CENTRE (PTY) LIMITED**

Respondent/Appellant

APPLICATION FOR LEAVE TO APPEAL - JUDGMENT

COETZEE AJ

- [1] The applicant and the respondent are referred to as in the application.

- [2] The respondent during November 2020 served an application for leave to appeal against the whole of the judgment of 13 November 2020, including the costs order, upon the applicant.
- [3] The application for leave to appeal contains the various grounds of appeal.
- [4] The applicant opposes the application for leave to appeal.
- [5] Both parties filed heads of argument in support of and its opposition to the application for leave to appeal.
- [6] I have considered the application for leave to appeal, the heads of argument and the oral representations.
- [7] Section 17 of the Superior Courts Act, No 10 of 2013 regulates an application for leave to appeal from a decision of a High Court. It reads as follows:

'17. Leave to appeal.—

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties'.

- [8] The Court in *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others*¹ conveniently summarised the approach to an application for leave to appeal:

'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

¹ JR1170 /2013 unreported

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) and also *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others*².'

- [9] I do not intend to deal with each of the grounds of appeal separately.
- [10] The respondent has, except for the submission below, not raised grounds other than those in the hearing of the matter which matters were addressed in the reasons for the judgment.
- [11] The respondent in the heads of argument raised the following new ground for an appeal:

"At the very least the terms and conditions of the agreement are in dispute and in the circumstances the application should not have been launched on motion proceedings and could not have been determined on the papers". In support of the submission counsel for the respondent submitted that the Court *mero moto* during argument had to raise the dispute of fact and referred the matter to trial or for oral evidence on the intention of the parties. For that reason, counsel submits, another

² (2016) 37 ILJ 1485 (LC)

Court would come to a different finding, presumably that the matter be referred for evidence or to trial.

[12] Counsel did not rely upon any authority for the submission. I am not persuaded by the submission. It is trite that a party who believes that there is a dispute of fact that cannot be resolved on the papers, should as soon as possible invoke its right to ask for the matter to be referred to trial or for evidence on a defined point.

[13] In my view after careful consideration of the respondent's stated grounds for leave to appeal and the oral submissions, there is nothing that persuades me that any appeal would have a reasonable prospect of success.

[14] There are no other compelling reasons why leave to appeal should be granted.

[15] There is no reason why costs should not follow the result.

[16] It is ordered that:

[16.1] The application for leave to appeal is dismissed.

[16.2] Respondent (appellant) to pay applicant's costs


H S COETZEE

**ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION OF THE HIGH COURT,
JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 May 2021.

APPEARANCES

On behalf of Applicant

Counsel for the Applicant:

Instructed by:

Advocate Richard Goslett

Dewey Hertzberg Levy Inc

On behalf Respondent:

Instructed by:

Advocate V Vergano

MaCartney Attorneys

Date of Hearing:

17 February 2021

Date of Judgment:

28 May 2021