

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

CASE NUMBER: J132/02

In the matter between:

S NGCOBO

Applicant

and

TENTE CASTERS (PTY) LTD

Respondent

JUDGMENT: LEAVE TO APPEAL

FRANCIS, J:

1. The respondent is applying for leave to appeal against an order made by me on 9 April 2002. This was after I *inter alia* made an arbitration award issued on 16 November 2001 an order of court. The grounds of appeal are that:
 - 1.1. The court *a quo* erred in finding that the respondent did not oppose the relief sought and specifically finding that the respondent was not before the above honourable court.
 - 1.2. The court *a quo* erred in not granting the respondent an adjournment of one week in order to place papers before the above honourable court.

- 1.3. The court *a quo* erred in not accepting the submission set forward by counsel on behalf of the respondent.
2. In terms of Section 166(1) of the Labour Relations Act 66 of 1995 (“the Act”) an appeal lies from a judgment of the Labour Court to the Labour Appeal Court with leave of the Labour Court. The traditional test in deciding whether to grant leave to appeal is whether there is a reasonable prospect that another court may come to a different conclusion.
3. I deem it appropriate in this application to sketch the background facts before dealing with the application for leave to appeal.
4. On 17 January 2002 the applicant served an application in terms of Section 158(1) (c) of the Act to make an arbitration award an order of court, on the respondent. On 23 January 2002, the applicant filed the application with this court. In terms of rule 7(4)(a) and (b) of the Rules of this Court, the respondent was required to deliver an answering affidavit within ten days of service of the application on it. The notice to oppose and answering affidavits were to be filed on 31 January 2002. The respondent failed to file a notice to oppose or an answering affidavit which prompted the applicant to apply for a set down on an unopposed basis. The matter was set down for hearing on 9 April 2002. The Registrar of this Court did not serve a notice of set down on the respondent as a result of its failure to oppose the application.
5. At the hearing of this matter on 9 April 2002, Mr Maluleke, a union official, represented the applicant. Mr Nel stated that he was appearing on behalf of the respondent. He requested a short adjournment to discuss the matter with Mr Maluleke. The request was granted. The matter was called again. The parties had failed to reach an agreement about whether the matter should be postponed. Mr Maluleke insisted that the matter should proceed on an unopposed

basis. Mr Nel stated when asked by this court where his brief was, that he was briefed telephonically by the respondent's attorney. He stated that he had been briefed that same morning. When asked where his attorney was he stated that his attorney was in Cape Town. He could however not provide this court with a written brief.

6. Mr Nel stated that he had drafted a review application in the above matter. He could not provide this court with a case number in the review application. The matter was again stood down to enable him to obtain a case number from the respondent. Mr Nel informed the court after the adjournment that the respondent was unable to provide him with any case number. He could also not find any record at the Registrar's office that such a review application was filed with this court. He conceded that there was no review application pending in this court.
8. No papers were filed by Mr Nel, nor was any application filed for condonation. The matter proceeded on an unopposed basis. The arbitration award was made an order of court.
9. This court has on a number of occasions dealt with the firm styled Snyman, Van de Heever Heyns. In most cases either Mr Nel is instructed by the firm to represent its clients, or Mr Snyman appears for their clients. It happens quite frequently especially in unopposed matters that Mr Nel would represent respondents without the necessary papers. In most cases matters will be postponed after reaching agreements with the applicants. The above firm is notorious for its delaying tactics. On a number of occasions costs *de bonis propriis* orders have been made by this court against it.
10. A worrying feature is that in most cases Mr Nel who is an advocate, would depose to affidavits when Snyman is called to explain his conduct. It would also appear that Mr Nel is operating from the premises of his instructing attorney's offices.

11. Most reputable firms this court has come across provide their counsel with written briefs. This is a practise that has evolved over many years. This court has not come across an instance except for the present case where a firm would provide its counsel with a telephonic brief. Mr Nel's explanation that he was provided with instructions cannot be correct, since his instructing attorney was out of town. It now appears from what Mr Nel and Mr Maluleke said to me that a copy of the notice of set down was sent by Mr Maluleke to the respondent. Mr Nel however argued that he knew that this application was on the court roll because the respondent was given a notice of set down by the Registrar. A closer inspection of the court file reveals otherwise. It reveals that only the applicant was given a notice of set down by the Registrar. It now turns out that Mr Maluleke as stated earlier had provided the respondent with a copy of the set down. Why Mr Nel argued that the Registrar had given the respondent a notice of set down, is beyond me.
12. I am of the view that Mr Nel appeared on his own accord without any instructions from the respondent and without being properly briefed by his attorney. Mr Nel could not indicate to this court when exactly he was briefed by his attorney. Mr Nel was also not in possession of an application for condonation or any answering affidavits as required in terms of rule 7(4)(a) and (b) of the rules of this Court.
13. The applicant was reinstated in terms of an award that was issued on 16 November 2001. The respondent has to date failed to reinstate him in his employment. It is an established principle that the public interest is served by bringing litigation to a close with all due expedition. The Act and judicial process, in performing their vital conflict - resolution role, have provided a structure and mechanism whereby conflicts can be resolved and their consequent tensions can be relieved openly, fairly and efficiently. Delays and interruptions in the smooth course of litigation inevitably frustrate the proper performance of this role: justice delayed is justice

denied. It is unacceptable that the applicant has to date not been allowed by the respondent to be reinstated.

14. I am satisfied that the respondent did not oppose the relief sought and was not before the court on 9 April 2002.
15. I have carefully considered the arguments that were raised, the grounds of appeal together with my order. I am not persuaded that there are reasonable prospects that another court will reach a different conclusion to that reached by me.

16. I accordingly make the following order:
- (a) The application for leave to appeal is dismissed with costs.
 - (b) The Registrar is directed to bring this judgment and a copy of the transcript of the proceedings of 9 April and 30 May 2002 when it becomes available, to the attention of the Johannesburg Bar Counsel and the Law Society of the Northern Provinces.

FRANCIS, J

Judge of the Labour Court

APPEARANCES

Applicant: **Union Official**

Respondent: **Adv A J Nel Instructed by Snyman, Van Der Heever
Heyns Attorneys**

Date of Hearing: **30 May 2002**

Date of Judgment: **30 May 2002**

