

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

Case no: JS222/02

In the matter between:

**THE MINISTER OF SAFETY AND
SECURITY
NATIONAL COMMISSIONER OF SAPS**

**1st APPLICANT
2nd APPLICANT**

and

JHA COETZER & 11 OTHERS

RESPONDENTS

JUDGMENT

Landman J:

I. The Minister of Safety and Security and the Commissioner of the South African Police Services apply for leave to appeal against the whole of my judgment which was handed down on 29 November 2002.

1. The application is 28 days late. The applicants have applied for condonation of the late application. The respondents, Inspector Coetzer and 10 others, oppose the application for condonation and the application for leave to appeal.

1. The applicants have explained why the application is late. The absence of the senior management of the SAPS during the December festive season, the unavailability of counsel, the need to be prudent with public moneys and other factors incline me to grant the application should I find that the applicants have reasonable prospects of success.

1. The applicants set out, in their notice motion, the grounds upon which they rely for leave to appeal. This part of the notice reads:

“ Geliewe verder kennis te neem dat die aansoek om verlof op appèl sal berus op die volgende gronde

1. *Dat die Agbare Hof gefouteer het deur te bevind dat die applikante nie gelet het nie op die effektiwiteit van die Springstofeenheid van die Suid Afrikaanse Polisiediens (die Springstofeenheid) by die advertensie van die poste vir die persone van die aangewese groep.*
2. *Dat die Agbare Hof gefouteer het deur te bevind dat die applikante slegs op 'n grond van verteenwoordiging (representivity) geweier het om die Respondente te bevorder en dat die Applikante geen aandag gegee aan die effektiwiteit van die Springstofeenheid nie.*
3. *Dat die Agbare Hof gefouteer het deur te bevind dat genoegsame pogings aangewend is deur die Springstof eenheid om die persone van die aangewese groep te werf om by die Springstofeenheid aan te sluit.*
4. *Dat die Agbare Hof gefouteer het deur te bevind dat enige diskriminasie teen die respondente in die omstandighede onbillik was.”*

1. The test for leave to appeal is well known. An applicant for leave to appeal must show that there is a reasonable prospect that another court would come to a different conclusion. Clearly this prospect must, in the view of Rule 30 of the Rules of the Labour Court, relate to the grounds for leave to appeal upon which an applicant relies.

1. The applicants' four grounds relate to factual findings which I have made. It is perfectly permissible to appeal against findings of fact. I have carefully considered whether there is a reasonable prospect that a court of appeal would decide these issues differently. I am satisfied that there is no such prospect.

1. The applicants do not rely upon any error of law. Some submissions were made orally during the application, at my prompting, about the application of the Employment Equity Act of 1998 and the Constitution of the Republic of South Africa of 1996. No application was made, at yesterday's hearing, to broaden the grounds set out

in the notice. It is not permissible for me to decide the application on any basis other than the grounds upon which the applicants rely. The result is that I am precluded, by the applicants' grounds for leave to appeal, from sending a matter of undoubted public importance for consideration by a higher court.

1. In the result the application for condonation, and with it the application for leave to appeal, fails and is dismissed with costs.

SIGNED AND DATED AT BRAAMFONTEIN THIS 7TH DAY OF MARCH 2003

A A Landman

Judge of the Labour Court