



REPUBLIC OF SOUTH AFRICA

Not reportable /
of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 437/11

In the matter between:

E MLAMBO

First applicant

J DLAMINI

Second applicant

N MLUNGWANA

Third applicant

and

**NATIONAL
AUTHORITY**

PROSECUTING

First Respondent

GPSSBC

Second Respondent

ADV JP HANEKOM

Third Respondent

Heard: 20 June 2012 (in chambers)

Delivered: 21 June 2012

Summary: Leave to appeal dismissed

RULING ON LEAVE TO APPEAL

STEENKAMP J

- 1] The applicants have applied for leave to appeal against my *ex tempore* judgment of 16 May 2012.
- 2] The case before this court concerned a review application of an arbitration award. The arbitrator ruled that the applicants had failed to discharge the onus of proving that the first respondent (the NPA) had committed an unfair labour practice in failing to promote them.
- 3] In my judgment, I found that the arbitrator's finding was not so unreasonable that no other arbitrator could have reached the same conclusion. I dismissed the application but made no order as to costs.
- 4] In their application for leave to appeal, the applicants have rehashed their argument at the arbitration hearing. That is largely irrelevant. What is relevant, is the evidence led at arbitration; the finding of the arbitrator, based on that evidence; the finding of this court that the arbitrator's ruling was not reviewable; and whether another court may come to a different conclusion.
- 5] The applicants concede that it was a precondition for the jobs for which they applied that they had to have drivers' licenses; and that they did not have drivers' licenses. Despite that, they persist with their argument that the arbitrator's finding was unreasonable.
- 6] The applicants also concede that a court should not readily intervene in disputes regarding promotion unless the applicants can show bad faith or an improper motive. They continue to make bald and unsubstantiated allegations of discrimination not borne out by the evidence before the arbitrator. They also base their grounds of appeal on review principles that are not in line with the Constitutional Court's decision in *Sidumo v Rustenburg Platinum Mines Ltd.*¹
- 7] The applicants have not raised any grounds of appeal on the basis of which another court may come to a different conclusion.

¹ (2007) 28 ILJ 2405 (CC).

- 8] I did not make a costs order *a quo*. That is where the applicants should have let the dispute rest. Instead, they have caused the fiscus to incur further costs in opposing an application for leave to appeal that has no merit. The applicants should be held liable for the costs of this application.

Order

- 9] The application for leave to appeal is dismissed with costs.

Steenkamp J

Judge of the Labour Court of South Africa