



REPUBLIC OF SOUTH AFRICA

Not reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Case no: C 665/11

In the matter between:

SOUTH AFRICAN BREWERIES LTD

Applicant

and

CCMA

First Respondent

TARIQ JAMODIEN N.O.

Second Respondent

CEDRIC KARSTENS

Third Respondent

Heard: In chambers

Delivered: 25 July 2012

RULING ON LEAVE TO APPEAL

STEENKAMP J

Introduction

- 1] The applicant seeks leave to appeal against my judgment of 24 May 2012 in which I dismissed its application for review with costs.

The applicable test

- 2] It is trite that the applicable test is whether there is a reasonable prospect that another court may come to a different conclusion.¹ To this is sometimes added the interests of justice.

Evaluation / Analysis

- 3] On of the issues addressed in my judgment is the appropriate test on review, especially as regards the role of the commissioner in deciding whether the sanction of dismissal was fair.
- 4] Despite the apparently clear articulation of the test by Navsa J in *Sidumo*² and the subsequent *dictum* of the Labour Appeal Court in *Wasteman Group v SAMWU & Others*³, there still appears to be some confusion about the commissioner's role in this regard.
- 5] In my view, it is in the interests of justice that the Labour Appeal Court should once again provide clear guidance on this aspect of the test on review.

Order

- 6] Leave to appeal is granted. Costs of this application are to be costs in the appeal.

Steenkamp J

Judge of the Labour Court of South Africa

1 *Karbochem Sasolburg (a division of Sentrachem Ltd) v Kriel* (1999) 20 ILJ 2889 (LC) 2890D.

2 *Sidumo & another v Rustenburg Platinum Mines Ltd & others* (2007) 28 ILJ 2405 (CC) para [75].

3 Unreported, CA 6/2011 (8 March 2011).

