



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C 646/16

In the matter between:

**PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA**

Applicant

and

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION
Respondent**

First

ARTHI SINGH-BHOOPCHAND N.O

Second Respondent

S MOHAMED N.O

Third Respondent

CECILIA BRUMMER N.O

Fourth Respondent

**JOYCE NTULI
Respondent**

Fifth

RESPONDENTS LISTED

**IN ANNEXURE "A"
Respondents**

Sixth to further

Decided: In chambers

Delivered: 6 July 2018

JUDGMENT: LEAVE TO APPEAL

TLHOTLHALEMAJE, J:

- [1] On 25 April 2018, this Court handed down a judgment in terms of which the condonation ruling dated 15 February 2016 issued under case number WECT 705-16 by the second respondent was reviewed and set aside. The Court replaced the ruling with an order dismissing the application for condonation.
- [2] The effect of the dismissal of the application for condonation was that the arbitration award issued by the fourth respondent under the same case number dated 2 September 2016 was also declared null and void. In that arbitration award the fourth respondent had found that the applicant, the Parliament of the Republic of South Africa (Parliament) had committed an unfair labour practice by failing to implement a purported decision of the then Acting Secretary of Parliament to re-grade the fifth to further respondents (the Researchers) to a higher salary grade.
- [3] For the sake of convenience, the parties will be cited as they were in the main review application. The Researchers have since filed an application for leave to appeal against the whole judgment and paragraphs 2 and 3 of order of this Court. The application for leave to appeal remained unopposed as at the writing of this judgment.
- [4] Central to the grounds of appeal is the date on which the unfair labour practice dispute arose and whether the Researchers' claim before the CCMA was premised on a continuing act of unfair labour practice or on "a fixed cause of action". The Researchers placed reliance on the decision of the Labour Appeal Court (LAC) in *South African Broadcasting Corporation Ltd v Commission for Conciliation, Mediation and Arbitration and Others*¹ for the proposition that an unfair labour practice may consist of a single act and/or it may be repetitive or continuous in nature as in the current dispute, hence there was no need for an application for condonation before the CCMA.
- [5] The Researchers further contend that if the Court had applied the above principle, it would not have come to a conclusion that the explanation proffered by the Researchers was unsatisfactory and that the dispute before

¹ [2009] ZALAC 13; (2010) 31 ILJ 592 (LAC); [2010] 3 BLLR 251 (LAC) (18 November 2009).

the CCMA was out of time. It is submitted that the Court would have otherwise reached a conclusion that the claim was grounded on a continuous act of unfair labour practice, which Parliament continued to perpetrate.

[6] The other grounds of appeal are ancillary in nature and I do not deem it necessary to repeat them, save to mention that the Researchers hold the view that the Court erred in its assessment of whether good cause was shown, or in its assessment of the second respondent's ruling in respect of the requirements of good cause. In this regard, it was submitted that;

- 6.1. The conclusion by the Court that the reasons for delay were unsubstantiated and revealed a lack of interest in the prosecution of the dispute was not supported by the undisputed correspondence between the parties which served as evidence before the CCMA.
- 6.2. The Court failed to have regard and give weight to the importance of the dispute, the interest of justice and the Researchers' prospects of success in the main dispute.
- 6.3. Court disregarded the prejudice to the Researchers if the non-compliance with the timeframes was not condoned.
- 6.4. The Court unduly found the balance of convenience in favour of Parliament on the basis that it would have to allocate resources in opposing the claim notwithstanding that this was the only submission proffered by it in respect to the issue of prejudice.

[7] The test when considering applications for leave to appeal is fairly trite. The court must ask or enquire whether the applicant has demonstrated that there are reasonable prospects that another court (in this case, the Labour Appeal Court (LAC)), would arrive at a decision different to that of the court *a quo*².

² See *S v Smith* 2010 (1) SACR at 576 (SCA), where it was held that;

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of succeed on appeal and that those prospects are not remote but have realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in

The test applicable in applications for leave to appeal is stringent³, and it is trite that appeals should be limited to matters where there is a reasonable prospect that the facts before the court *a quo* could be treated differently by the appeal court, or where there are novel disputes on the law raised in the main proceedings.

- [8] Having reflected upon my judgment and considered the grounds upon which leave to appeal is sought and the submissions in that regard, I am satisfied that the judgment extensively dealt with these grounds upon which leave to appeal is sought, the reasons why the condonation application before the CCMA did not establish good cause, and no purpose will be served by rehashing same in this judgment.
- [9] Further, based upon the legal principles referred to above, I am satisfied that the contention that the matter is of great importance or of public importance is indeed far-fetched, and this appeal does not raise any novel or contentious points of law. In my view therefore, there is no sound or rational basis for a conclusion to be reached that there are reasonable prospects that the LAC would come to a different conclusion than the one arrived at by this Court. In the result, the application for leave to appeal stands to be dismissed.

Order:

1. The application for leave to appeal is dismissed.

E. Tlhotlhemaje

Judge of the Labour Court of South Africa

other words, be a sound, rational basis for the conclusion that there are prospects of success an appeal'

³ See *Seatlholo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others* (2016) 37 ILJ 1485 (LC)

LABOUR COURT