



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not reportable

Case no: C578/2016

In the matter between:

BASIL ALLEN JULIES

Applicant

and

**THE COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

MADELEINE LOYSON N.O

Second Respondent

THE UNIVERSITY OF THE WESTERN CAPE

Third Respondent

Decided: In Chambers

Delivered: 12 December 2018

JUDGMENT-APPLICATION FOR LEAVE TO APPEAL

PRINSLOO, J

Introduction

[1] The Applicant seeks leave to appeal against the judgment of this Court, handed down on 13 September 2018, in terms of which the Court dismissed

the Applicant's review application with costs. The application is opposed by the Third Respondent.

- [2] Both parties have filed submissions in respect of the leave to appeal and I have considered both submissions in determining this application.

Grounds for appeal

- [3] I have had regard to the grounds of appeal raised by the Applicant and from the outset, I must mention that there is no merit in these grounds as they are to a large extent, a repetition of the grounds raised in the review application. By way of example, the Applicant makes the following averments:

3.1 The Court erred in not finding that the arbitrator committed a gross irregularity in allowing the complainant, Dr Botha to give evidence remotely. According to the Applicant, this excluded him from the proceedings thereby denying him of a right to a fair hearing. Therefore, the arbitrator made herself guilty of misconduct in relation to her duties as an arbitrator and exceeded her powers.

3.2 The Court erred in finding that the arbitrator acted reasonably in the analysis of the evidence and thus rendered a reasonable award. The Applicant asserts that the Court ought to have found that the arbitrator was biased against him and did not keep an open mind during the arbitration proceedings.

- [4] The gist of the Applicants complaint is that, had he been allowed to sit during the complainant's testimony, specifically, during her cross and re-examination, he would have been able to provide his legal representative with instructions. This argument has no merit, I have dealt with this issue extensively in my judgment and as in the review application, I cannot find any merit as to how and to what extent would the Applicant's presence have resulted in a different case being made out by his legal representative. As already pointed out in my judgment¹, the cross-examination of Dr Botha by the Applicant's legal representative covers 122 pages of the transcribed record. The attack on the

¹ At para [34].

arbitrator and subsequently this Court on this issue is *argumentum ad hominem*. Furthermore, there is nothing in the record and the Applicant offers nothing logical to support the claim that the arbitrator was biased against him. This Court has had to read volumes of documents and consider issues in the review application that were void of merits and again in this application, lengthy submissions are made, all of which lack merit. In my view it will not be in the interests of justice to burden the Labour Appeal Court (LAC) with an equally meritless appeal.

The test for leave to appeal

- [4] It is trite that there is no automatic right of appeal against a judgment of the Labour Court. This much is clear from section 166(1) of the Labour Relations Act² (LRA) which provides that any party to any proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the LAC against any final judgment or final order of the Labour Court. In order to be entitled to leave to appeal, an applicant in an application for leave to appeal must satisfy this Court that there is a reasonable prospect that another court could come to a different conclusion"³. The test is not whether or not there is a possibility that another court could come to a different conclusion, the test is whether or not there is a reasonable prospect that another court could come to a different conclusion.
- [5] In *Westing House Break & Equipment (Pty)Ltd v Bilger Engineering (Pty) Ltd*⁴ the Court reiterated the general principle that in order for an applicant for leave to appeal to succeed, the applicant must demonstrate that it has a reasonable prospect of success on appeal. It was also stated that an appeal should be allowed where the matter is of great importance or where the matter is of public importance or where the Court is of the view that the decision might affect other questions. ⁵ *In casu*, the grounds as submitted by the Applicant fall hopelessly short off the mark of reasonable prospects of success.

²Act 66 of 1995 as amended.

³ See *Woolworths Ltd v Matthews* [1999] 3 BLLR 288 (LC).

⁴ 1986 (2) SA 555 (A).

⁵ See in this regard *Moller v Keimoes School Committee and Another* [1911] AD 585.

[6] The tenet of the LRA, is based on the requirement for expeditious resolution of labour disputes. This is a case where the dispute between the parties must be brought to finality and the Applicant cannot be allowed to misuse scarce judicial resources on a meritless case where the result would still be the same. This application has to fail.

[7] In the premises, I make the following order:

Order

1. The application for leave to appeal is dismissed with costs.

Connie Prinsloo

Judge of the Labour Court of South Africa