


DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO. NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.

29/07/22
DATE


SIGNATURE



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR137/15

In the matter between:

PASSENGER RAIL AGENCY SOUTH AFRICA

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

COMMISSIONER BONGANI KHUMALO, N.O.

Second Respondent

MOHLALA M.M

Third Respondent

SATAWU

Fourth Respondent

Heard: On paper

Delivered: 29 July 2022

JUDGMENT – LEAVE TO APPEAL

MOTHIBI, AJ

Introduction

- [1] This is an unopposed application for leave to appeal to set aside the Judgment handed down on 25 January 2021. In addition, the Applicant has asked for condonation for the late delivery of the application for leave to appeal and further for an order granting it an extension of the ten-day period referred to in rule 30 (2) of the Rules for the Conduct of Proceedings in the Labour Court (condonation application).

Condonation application

- [2] The essence of the reasons for the delay that the Applicant gives in its application for condonation is that despite the fact that the judgment was handed down on 25 January 2021, the Applicant and its representatives only received a copy of it on 12 March 2021. The ten-day period referred to in rule 30, based on this undisputed fact, expired on or about 29 March 2021. The application for leave to appeal is therefore two days late.
- [3] In light of the short delay and the reason advanced by the Applicant for the delay which reason is that it was occasioned by the need to furnish its attorneys with instructions, condonation is granted.

Application for leave to appeal

- [4] The test and principles that govern applications for leave to appeal is now well known. It is a stringent one, having regard to the imperative to ensure the expeditious resolution of labour disputes.¹ It is a test referred to in section 17 of the Superior Courts Act² which provides:

“Leave to appeal may only be given where the Judge or Judge’s concerned are of the opinion that –

¹ See: *Martin & East (Pty) Ltd v National Union of Mineworkers and others* (2014) 35 ILJ 2399 (LAC) at 2405I-2406D.

² No. 10 of 2013.

- (a) (i) The Appeal would have reasonable prospects of success;
- (ii) There is some other compelling reason why the Appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) A decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) Where the decision sought to appeal does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[5] It is trite that the test applicable in an application such as this therefore no longer requires a determination of whether there is a reasonable prospect another Court might come to a different conclusion but rather, and using the word "*would*" in section 17(1)(a) of the Superior Court's Act, the threshold has now been raised such that a party that seeks leave to appeal must establish that the appeal would have reasonable prospects of success. With the above principles in mind, I have carefully considered the grounds of appeal raised by the Applicant.

Grounds of appeal

[6] Initially, the Applicant had a third ground of appeal which was subsequently abandoned. This related to whether the Commissioner had the power in terms of section 193(4) of the Labour Relations Act³ (LRA) to make an order of "*protective promotion*". As I say, this ground was abandoned.

[7] There are accordingly only two grounds that remain, being:

- 7.1. That the Court erred in finding that the Third Respondent (the Employee) would have been appointed to the advertised post of Financial Manager if she had been interviewed and further that the Court erred in placing reliance solely on the Third Respondent's (Commissioner's) own

³ No. 66 of 1995, as amended.

conclusions based on the evidence led on behalf of the Employee at the arbitration proceedings;

- 7.2. In the alternative that the Court ought to have interfered with the manner in which the Commissioner dealt with the issue of remedy. In this regard, it is contended that the Court ought to have interfered with the Commissioner's finding in circumstances where that finding had the effect of compensating the employee twice for one claim. It is further alleged in this regard that the Commissioner failed to exercise his discretion appropriately and reasonably.

Conclusion

- [8] In my considered opinion, having regard to the two grounds of appeal set out above, I am not satisfied that an appeal would have reasonable prospects of success.

- [9] Wherefore the following order is made:

Order

1. Condonation for the late filing of the application for leave to appeal is granted.
2. The application for leave to appeal is dismissed.
3. There is no order as to costs.



Mothibi AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Werksmans Attorneys

For the Third Respondent: No appearance

LABOUR COURT