REPUBLIC OF SOUTH AFRICA

Not reportable

Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 1701/15

In the matter between:

GENET MINERAL PROCESSING (PTY) LTD	First applicant
and	
CCMA	First respondent
MOKABANE N.O.	Second respondent
ESWUSA obo MAGAGULA	Third respondent

Delivered: 13 June 2017

JUDGMENT

STEENKAMP J

Introduction

[1] The applicant, Genet, applies for leave to appeal against my *ex tempore* judgment of 22 March 2017.

[2] That judgment was handed down following an application to review an arbitration award following the dismissal of the employee, Mr Magagule. The arbitrator found that the dismissal was unfair. I dismissed the application for review with no order as to costs. The award was not so unreasonable that no other arbitrator could have come to the same conclusion.[1]

[3] The applicant delivered its application for leave to appeal on 28 April 2017, without having obtained a transcript of the *ex tempore* judgment as provided for in clause 14.5 of this Court's Practice Manual. My secretary brought that to the parties' attention on 18 May 2017. Yet I only received the transcript for my editing and signature on 1 June 2017. I have considered both parties' submissions in that context.

Grounds of appeal

[4] The applicant argues that:

4.1 The arbitrator – and this Court – should have decided the fairness of the employee's dismissal with reference to his alleged misconduct on 11 and 26 April, and not – as reflected on the charge sheet – on 18 and 27 April 2015.

4.2 Smuts gave sufficient evidence of misconduct on 11 and 26 April.

4.3 The award was so unreasonable that no other arbitrator could have come to the same conclusion.

The test

[5] The test to be applied is that referred to in s 17 of the Superior Courts Act, 10 of 2013. Section 17(1) provides:

> Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
>
> (a) (i) the appeal would have a reasonable prospect of success; or

[1] *Sidumo v Rustenburg Platinum Mines Ltd* [2007] 12 BLLR 1097 (CC).

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed 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.

[6] As Van Niekerk J recently pointed out[2] , the traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. The use of the word "would" in s17 (1) (a) (i) is indicative of a raising of the threshold, since previously all that was required for the applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion (see *Daantjie Community and others v Crocodile Valley Citrus Company (Pty) Ltd* (75/2008) [2015] ZALCC 7 (28 July 2015). Further, this is not a test to be applied lightly – the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law (See the judgment by Davis JA in *Martin & East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling in *Oasys Innovations (Pty) Ltd v Henning* (C 536/15, 6 November 2015). See also *Beaurain v Martin NO* (2014) 35 *ILJ* 2454 (LC).

[2] *Napo v SAPS* (Unreported, case no JR 2704/08).

Evaluation

[7] As in *Martin & East*, this case mainly turns on the factual matrix that served before the arbitrator. It doesn't raise any novel point of law. And on the reasonableness test for reviews as it stands, there is no prospect that another court would come to a different conclusion.

Conclusion

[8] There are no reasonable prospects that another court will come to a different conclusion, given the hurdle to succeed on review.

[9] I did not award costs *a quo*. The matter should have ended there. The union should not have had to incur further costs in opposing this application.

Order

The application for leave to appeal is dismissed with costs.

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Anton Steenkamp

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:	R Grundlingh
Instructed by	Joubert attorneys.
THIRD RESPONDENT:	Goldberg attorneys.