IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Of interest to other judges

Case No. JR2529/13

In the matter between:

SIMON SEROBE **Applicant**

and

ESKOM HOLDINGS SOC LTD **First Respondent**

JOSEPH WILSON THEE N.O. **Second Respondent**

COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION **Third Respondent**

Decided: **In Chambers**

Delivered: **20 September 2017**

JUDGMENT - LEAVE TO APPEAL

SALOOJEE AJ

Introduction

[1] This is an application for leave to appeal against the *ex temporae* judgment handed down on 4 May 2017.

Test for leave to appeal

[2] An applicant for leave to appeal must satisfy the court that it has reasonable prospects of success in the appeal. In *Smith v S*[1], the Supreme Court of Appeal 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 success on appeal and that those prospects are not remote but have a 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 other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[3] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*[2], the Court held that there is a stricter test that is applicable for appeals to the LAC. The Court held, in particular, that the Labour Relations Act [3] (LRA) was designed to ensure the expeditious resolution of industrial disputes and this means that the Labour Court needs to be cautious when leave to appeal is granted. There are two sets of interests to be considered – first, the interest of the appellant,

[1] 2012 (1) SACR 567 (SCA) at par. 7
[2] (2014) 35 ILJ 2399 (LAC)
[3] Act 66 of 1995 as amended

which is entitled to have his rights vindicated if there is a reasonable prospect that another court might come to a different conclusion and the interests of the respondent, which may have to wait years for an appeal to be prosecuted. Second, where the matter is resolved on own facts, no novel point of law, no misinterpretation of existing law, the matter must end at Labour Court.

[4] In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others*[4], Van Niekerk, J stated:

> "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. As the respondents observe, the use of the word "would" in s17(1)(a)(i) are 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 and another* (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, as should the Labour Appeal Court when petitions are 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)

[4] (2016) 37 ILJ 1485 (LC) at par. 3

SACR 369 (SCA) and the ruling by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning and another* (C 536/15, 6 November 2015)."

Grounds for leave to appeal

[5] The application for leave to appeal contains broadly grounds of appeal related to:

5.1 The Court failed to act in accordance with a previous order; and

5.2 The Court failed to find in favour of the applicant on the merits of the review application.

[6] The applicant's grounds of appeal, on a broad basis, are inconsistent. While the applicant relies on a failure of the Court to act in accordance with a previous order relating to procedural matters, the applicant nonetheless proceeded with the review application on the merits and in spite of the order.

[7] The basis of the *ex temporae* judgment is that there is no nexus between the facts presented at arbitration and the grounds of review. In the absence of a nexus between the facts and the grounds of review, the review cannot succeed.

[8] I am not convinced that there are reasonable prospects that another court might come to a different conclusion and that there are prospects of success on appeal.

Order

[9] In the premises, the following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay the first respondent's costs.

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Y Saloojee

Acting Judge of the Labour Court of South Africa