



**REPUBLIC OF SOUTH AFRICA**

**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Not of interest to other judges

Case no: JR 1128/16

In the matter between

**MOBILE TELEPHONE NETWORKS (PTY)  
LTD**

**Applicant**

And

**COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION**

**First Respondent**

**COMMISSIONER MBONGENI  
MOTSOENENG N.O.**

**Second Respondent**

**BONGANI MICHAEL MHLONGO**

**Third Respondent**

**Date heard:            In chambers:**

**Date delivered:    12 September 2016**

**Summary:**    Application for leave to appeal

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## JUDGMENT - LEAVE TO APPEAL

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COETZEE AJ

- [1] In the *ex tempore* judgment with reasons of 8 June 2017 I dismissed the applicant's review application with no order as to costs.
- [2] I refer to the parties as are cited in the review application.
- [3] The applicant on 29 June 2017 served an application for leave to appeal and on 30 June 2017 filed the application with the Labour Court.
- [4] The application for leave to appeal sets out the various grounds of appeal.
- [5] The applicant and the third respondent filed written submissions in support and opposition of the application for leave to appeal.
- [6] The application for leave to appeal is opposed.
- [7] I have considered the application and the written representations in chambers.
- [8] In terms of Rule 30 (2)
- 'If leave to appeal has not been made at the time of judgment or order, an application for leave must be made and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period'
- [9] The application was made timeously.
- [10] Section 17 of the Superior Courts Act, No 10 of 2013 regulates an application for leave to appeal from a decision of a High Court. It reads as follows:

**'17. Leave to appeal.—**

- (1) 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
- (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'.

[11] This section also applies to applications for leave to appeal in the Labour Court.<sup>1</sup>

[12] The Court in *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others*<sup>2</sup> conveniently summarised the approach to an application for leave to appeal:

'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 and East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC), and

<sup>1</sup> Section 151 of the Labour Relations Act, Act 66 of 1995

<sup>2</sup> JR1170 /2013 unreported

also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp, J in *Oasys Innovations (Pty) Ltd v Henning and Another* (C 536/15, 6 November 2015) and also *Seatlholo and Others v Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union and Others*<sup>3</sup>.'

[13] I do not intend to deal with each of the grounds of appeal separately.

[14] The applicant has not raised grounds other than those in the hearing of the matter which matters were addressed in the reasons for the judgment.

[15] In my view after careful consideration of the applicant's stated grounds for leave to appeal and the submissions of both parties, there is nothing that persuades me that any appeal would have a reasonable prospect of success.

[16] There are no other compelling reasons why leave to appeal should be granted.

[17] I made no cost order in the main application. There is no reason why a cost order should now be made in an unopposed application.

[18] I make the following order:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

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Coetzee AJ

Acting judge of the Labour Court

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<sup>3</sup> (2016) 37 ILJ 1485 (LC)

LABOUR COURT

Representation

For the applicant: Mashiane Moodley & Monama Inc

For the Respondent: Floyd Makhanya Inc

LABOUR COURT