

DELETE WHICHEVER IS NOT APPLICABLE

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



13 APRIL 21 *Dunguwa* REPUBLIC OF SOUTH AFRICA
DATE SIGNATURE

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J172-2021

In the matter between

M B TABANE

Applicant

and

T KGARE

First Respondent

RAILWAY SAFETY REGULATOR

Second Respondent

B J NOBUNGA

Third Respondent

Heard: In chambers

Date delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 13 April 2021.

Summary:

Application for leave to appeal

APPLICATION FOR LEAVE TO APPEAL

COETZEE AJ,

- [1] In the *ex tempore* judgment with reasons of 8 March 2021 I granted the applicant relief.
- [2] The first respondent filed an application for leave to appeal.
- [3] The applicant opposes the application for leave to appeal.
- [4] The application for leave to appeal sets out the various grounds of appeal.
- [5] The applicant and the first respondent filed written submissions in support and opposition of the application for leave to appeal.
- [6] I have considered the application for leave to appeal and the written representations in chambers.
- [7] 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'
- [8] The first respondent timeously applied for leave to appeal.
- [9] 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'.

[10] This section also applies to applications for leave to appeal in the Labour Court.¹

[11] The Court in *Mgezeni Gasbat Nxumalo v the National Bargaining Council for the Chemical Industry (NBCCI) and Others*² 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 also *Kruger v S* 2014 (1) SACR 369 (SCA) and the ruling by Steenkamp, J in

¹ Section 151 of the Labour Relations Act, Act 66 of 1995

² JR1170 /2013 unreported

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*³.'

[12] The Supreme Court of Appeal recently in *Ramakatsa v African National Congress*⁴ considered the applicable test in Section 17 of the Superior Courts Act and stated as follows:

"[10] Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice.

This Court in *Caratco* [per Cachalia JA], concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'.

I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted.

The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

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

³ (2016) 37 ILJ 1485 (LC)

⁴ (SCA 724/2019) [2021] ZASCA 31 (31 March 2021)

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

[15] I have regard to the test in the *Ramakatsa*-judgment and am of the view that the appellant in this matter has not convinced this Court on proper grounds that she has reasonable prospects of success on appeal.

"Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist"

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

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

[18] There is no reason why a cost order should be made in this application.

[19] I make the following order:

[19.1] The application for leave to appeal is dismissed.

[19.2] There is no order as to costs.



Coetzee, AJ

Acting Judge of the Labour Court

APPEARANCES: (Dealt with in Chambers without oral argument)

FOR APPLICANT:

Attorneys Dima Mashego Attorneys

FOR RESPONDENT: Sandile July

Attorneys Werksmans Attorneys

LABOUR COURT