



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 2308/2018

In the matter between:

NEHAWU obo MAHOLE SMJ

APPLICANT

and

SOUTH AFRICAN REVENUE SERVICES

1ST RESPONDENT

DONALD KGALANE NKADIMENG

2ND RESPONDENT

**THE COMMISSION FOR CONCILIATION,
MEDIATION & ARBITRATION**

3RD RESPONDENT

Delivered: 27 October 2022

(This judgement was handed down electronically by circulation to the parties' representatives, by email. The date on which the judgment is delivered is deemed to be 27 October 2022.)

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK, J

[1] The applicant seeks leave to appeal against the whole of the judgment delivered by this court on 29 July 2022. In its judgment, the court refused to condone the late filing of a review application, and dismissed the application.

[2] The test to be applied is that referred to in section 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
- (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.

[3] The previously applicable formulation of the test is that in an application such as the present, the court is required 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 section 17 (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 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. 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 by Steenkamp J in *Oasys Innovations (Pty) Ltd v Henning & another* (C 536/15, 6 November 2015).

- [4] The applicant contends that the court erred in the calculation of the period of delay. The applicant is correct. The delay is recorded in paragraph 2 of the judgment. The applicant became aware of the award on 15 August 2018. The six-week period within which the review application had to be filed expired on 27 September 2018. The notice of motion was signed on 5 November 2018 and the application served on the first respondent (SARS) the next day. The application was thereafter served on the second and third respondents (the commissioner and the CCMA respectively) only on 5 December 2018, and filed in this court on 6 December 2018. The application was thus some 10 weeks late, and not 110 days late as recorded in the judgment.
- [5] The error on computation of the delay is not in itself a ground on which leave to appeal should be granted. The judgment, read as a whole, must necessarily be considered and the threshold applied. The delay remains significant. The explanation for the delay remains unsatisfactory, and the complete lack of any explanation for the delay between the signature of the notice of motion and the filing of the application a month later. The application for leave to appeal thus stands to be dismissed.

I make the following order:

- 1 Leave to appeal is refused.

André van Niekerk
Judge of the Labour Court of South Africa