

DELETE WHICHEVER IS NOT APPLICABLE

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

30/4/2021

DATE

*[Handwritten signature]*



**THE LABOUR COURT OF SOUTH AFRICA**

**(HELD AT JOHANNESBURG)**

**Not reportable**

**CASE NO: JR 2060/2013**

**In the matter between:**

**SIPHO MADLOZI THOMAS**

**MAHLANGU**

**Applicant**

**and**

**METAL & ENGINEERING INDUSTRIES**

**BARGAINING COUNCIL**

**S MOKWENA N.O**

**ZF LEMFÖRDER SA (PTY) LTD**

**First Respondent**

**Second Respondent**

**Third Respondent**

**Judgment delivered: 30 April 2021. Judgment delivered by email, sent to the parties' representatives.**

---

## 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 24 February 2021. In its judgment, the court dismissed an application to review and set aside an arbitration award issued by the second respondent on 4 September 2013. In his ruling, the second respondent upheld a final warning issued to the applicant, and his subsequent dismissal.
- [2] The test to be applied is established by s 17 of the Superior Courts Act, 2013. The court must determine whether there is a reasonable prospect that another court would come to a different conclusion. The nature of the test is one more stringent than that which previously applied. In *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others* (2016) 37 ILJ 1485, the court said the following:
- ... 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 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 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.
- [3] More precisely stated, the court must determine whether there is a reasonable prospect that the factual matrix would receive a different treatment or where there is some legitimate dispute on the law (see *Martin & East (Pty) Ltd v NUM* (2014)

35 ILJ 2399 (LAC); *Acting National Director of Public Prosecutions & Others v Democratic Alliance In re: Democratic Alliance v Acting Director of Public Prosecutions & Others* [2016] JOL 36123 (GP); *Mothuloe Inc. Attorneys v The Law Society of the Northern Provinces & Another* [2017} ZASCA 17 (22 March 2017), where the raising of the bar in applications for leave to appeal a has been affirmed). In this court, there is an additional consideration. In the *Martin & East* judgment, Davis JA urged labour courts to take care to ensure a balance between expeditious dispute resolution and the rights of the party seeking leave to appeal.

- [4] The principles recorded above are further tempered when an applicant seeks leave to appeal against the exercise of a discretion by the court a quo. In this instance, an appeal court will be reluctant to interfere, unless the discretion was improperly exercised. An appeal court cannot interfere only because it would have come to a different decision. (See *Blou v Lampert and Chipkin NNO and Others* 1973 (1) SA 1 (AD) at 15; *Rondalia Assurance Corporation of SA Ltd v Page and others* 1975 (1) SA 708 (AD) at 720.)
- [5] The grounds for appeal are by and large no more than a repetition of the grounds for review. These grounds have been addressed in the judgment that is the subject of this application, and I do not intend, for present purposes, to repeat the. Insofar as the applicant relies on his personal circumstances in support of the present application, these are regrettable, but have no bearing on the merits of the application. This matter has its roots in events that occurred some 8 ½ years ago. The award under review was issued some 7 ½ years ago. The statutory purpose of expeditious dispute resolution and the interests of finality require closure.

I make the following order:

1. Leave to appeal is refused.



André van Niekerk  
Judge of the Labour Court of South Africa