

IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE LOCAL DIVISION, MTHATHA]

[Not reportable]

CASE NO: 2511/2020

HEARD ON: 14/06/2022

DELIVERED ON:

26/07/2022

ROMILA SALOME PADAYACHEE

Applicant

And

THE MUNICIPAL MANAGER, KING SABATA
DALINDYEBO MUNICIPALITY

First Respondent

KING SABATA DALINDYEBO MUNICIPALITY

Second Respondent

JUDGMENT ON THE APPLICATION FOR LEAVE TO APPEAL

NHLANGULELA DJP

[1] Stripped to its bare essentials, the judgment dismissing the applicant's application for re-instatement to her job at KSD was made on the following bases.

[2] The applicant had a fixed term contract of employment with KSD that had commenced on 11 November 2012, and terminated on 30 June 2019. In anticipation of the termination date, KSD made a written offer of a permanent job that would have commenced at the end of the fixed term contract. However, the permanent contract could not kick-in for the reason that the applicant did not accept the salary package offered under the permanent contract. She raised a counter-offer that KSD did not accept with the result that the offer of permanent employment lapsed on 20 June 2019. Notwithstanding lapsing of the offer, KSD allowed the applicant more time, whilst on

the job, to weigh-up her options whether to accept or reject the offer. That indulgence was accompanied with payment of a discretionary salary at the rate that had been applied during the term of the fixed contract; and it endured until 30 November 2019 when KSD terminated the indulgence.

[3] On the foregoing, I found no room for the interpretation advanced on behalf of the applicant that KSD terminated a contract of employment and, *ergo*, that the reinstatement sought was legally competent as the permanent contract of employment never came to fruition.

[4] A long list of statements, replete with repetitiveness, that are encapsulated on the notice of application for leave translate to a ground for leave that there is a reasonable prospect that another court might find that annexure “E”, the disputed acceptance letter, is the requisite acceptance of the KSD offer. A further ground of appeal that I could decipher from the notice of appeal is that the negotiations for an improved salary package between the applicant and Dr Letuka, the head of Human Resources for KSD, established a contract of employment. Another ground that is advanced is that some interactions that took place between the parties after 30 November 2019 established a contract of employment. In so far as I did not look into the case from these perspectives I *erred*, so the arguments went.

[5] I am not persuaded that I erred in the manner in which I evaluated the oral evidence against the test that is stated in the case of *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C).

[6] In brief, a written acceptance of a salary package in terms of annexure “D6” and delivered to Mr Pakade would have established a contract of employment between the applicant and KSD. But that did not happen. The applicant chose to sign annexure “E” that was never delivered to Mr Pakade.

[7] It is my judgment that this application for leave does not pass muster in terms of the provisions of s 17 of the Superior Courts Act, 10 of 2013, which have been interpreted in *Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*, in the following terms:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[8] In this case the success of the applicant’s application for leave is founded on a hope rather than certainty that another court will differ from the court *a quo*.

[98] In the result the following order shall issue:

- (a) **The application for leave to appeal is dismissed.**
- (b) **The applicant to pay the costs of the application.**

Z M NHLANGULELA

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT, MTHATHA

Counsel for the applicant: Adv. P.V. Msiwa SC appearing with Adv. Matotie

Instructed by: Zilwa Att.

MTHATHA.

Counsel for the Respondents: Adv. B. Metu

Instructed by: Nosindwa Att. Inc

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