



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

17/01/2018

DATE

SIGNATURE

CASE NO: 25170/2016

DATE: 17/01/2018

IN THE MATTER BETWEEN:

ZIXOLISILE FENI

Applicant

and

**THE PAN SOUTH AFRICAN
LANGUAGE BOARD**

First Respondent

MPHO REGINALD MONARENG

Second Respondent

JUDGMENT

KOLLAPEN J:

1. The application for leave to appeal in this matter was argued simultaneously with the application for leave to appeal in the matter of *Joyce Sukumane v Mpho Reginald Monareng & Another* (High Court case no. 12023/2016).

The basis of the argument and the submissions made were identical in both applications for leave to appeal, and to that extent the judgments will accord with those arguments and submissions.

2. This is an application for leave to appeal against the judgment of this Court of the 27th of June 2017. The grounds on which the application for leave to appeal is based are comprehensively set out in the Application for leave to Appeal.

3. Those grounds include *inter alia* that:

- a) The Court erred in granting condonation in respect of the late filing of the Respondents' answering affidavit;
- b) The Court erred in finding that the applicant had failed to prove that she was excluded from consideration for the post of CEO on account of her age;
- c) The Court erred in not finding that the first Respondent did not meet the inherent requirements of the post concerned;
- d) The Court erred in not determining whether the failure to subject the first Respondent to a competency assessment was lawful and valid; and
- e) The Court erred in concluding that the circumstances under which the contract of employment of the first respondent was signed, were lawful.

4. Section 17(1) of the Superior Courts Act (10 of 2013) provides as follows:

“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.

5. In *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others* LCC14R/2014 (an unreported judgment of this Court delivered on 3 November 2014), it was held that s17(1) has raised the bar and that there must now be a measure of certainty that another Court would come to a different conclusion. This approach has been held to be correct in this division in *Acting National Director of Public Prosecutions and Others v Democratic Alliance, In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016), a judgment by Ledwaba DJP, Pretorius J and Mothle J (concurring in para 25).
6. In its judgment of the 27th of June 2017 this Court made the following findings and conclusions all of which have a bearing on the very question of whether it can be said that there is a measure of some certainty that another Court will come to a different conclusion:

- a) *“[A]ll that the applicant states is that she was reliably informed that she was excluded on account of her age. No further details are given nor does she indicate why she is not able to say who informed her of her exclusion and why such person is unable to depose to an affidavit.”* (in paragraph 6)

It is inconceivable that the applicant can hope to seek and obtain legal relief on such a bald and unsupported allegation.

- b) On the evidence it was clear that the second respondent met the requirements of the job and the conclusion in this regard by the Interview Panel was unassailable.
- c) That there was no requirement in law for the first respondent to undergo a competency assessment, this being a matter of discretion of the second respondent.
- d) That whatever the position of Professor Madiba may have been, he was authorised by the Board of the first respondent to handle matters relating to the contract between the first respondent and the second respondent.

7. In my view it can hardly be said that the application for leave to appeal bears any prospects of success.

Order

8. In the circumstances I make the following order:

The application for leave to appeal is dismissed with costs including the costs of two counsel.

25170/2016

HEARD ON: 3 October 2017

APPEARANCES:

FOR THE APPLICANT: Adv. Z Feni

INSTRUCTED BY: Makhafola & Verster Incorporated (ref.: S
Makhafola/ZF/SM01631

FOR THE RESPONDENTS: Adv. K PILLAY SC (appearing with Adv. A DIPA)

INSTRUCTED BY: Bowman Gilfillan Inc. (ref.: C Mkiva/6158833)