

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 9258/2021
DOH 5 OCTOBER 2022

REPORTABLE: **NO**/YES
OF INTEREST TO OTHER JUDGES: **NO**/YES
REVISED.

.....5 OCTOBER 2022
SIGNATURE **DATE**

In the matter of:

SOUTH AFRICAN MEDICAL ASSOCIATION

APPLICANT

and

SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION **FIRST RESPONDENT**

GERHARD VOSLOO N.O.

SECOND RESPONDENT

RULING

THIS RULING HAS BEEN HANDED DOWN REMOTELY AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF EMAIL. ITS DATE AND TIME OF HAND DOWN SHALL BE DEEMED TO BE 7 OCTOBER 2022

Bam J

A. Introduction

1. This is an opposed application for leave to appeal the order of this court of 9 March 2021, the reasons of which were provided on 28 May 2021. The application was brought on time, however, owing to several factors, it was brought to the attention of this court only recently, in September 2022.

B. Grounds

2. The respondents' grounds are set out in their application for leave to appeal. I crystallise the grounds in the following subparagraphs:

2.1 No case was made for the relief sought;

2.2 The court erred in failing to have regard to the broader context of the dispute between the parties.

2.3 The court erred in finding that the statement issued by SAMATU of 9 February 2021, in so far as it relates to SAMA's right to represent its employees in employment disputes, to have been false.

3. In their Heads of Argument, the respondents set out their grounds in the format set out here-below:

(i) Preliminary Issues;

(ii) Assessment of Factual Disputes; and

(iii) Concluding remarks

4. Having perused the respondents' Heads, under the section titled 'Assessment of Factual Disputes, the respondents advance to issues. The first has to do with this court's conclusion that the statement published by SAMATU contained falsehoods and that SAMATU published it knowingly. In the second instance, the Heads focus on the conclusion reached by the court that the renewal notice issued by SAMA can in no way be interpreted as coercing SAMATU members to terminate their membership with SAMATU and join SAMA. Although the respondents adumbrate the point that the orders granted limit their right as SAMATU to communicate with their members and State Departments on issues relating to SAMA, this particular point is not developed in the respondents Heads of Argument.

C. The Law

5. Section 17 (1) of the Superior Courts Act¹ makes provision for leave to appeal in the following terms: 17. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(d)(i) the appeal would have a reasonable prospect of success; or

(ii) there there is some other compelling reason why the appeal should be heard.

6. In terms of how the test introduced by section 17 of the Superior Courts Act is to be understood, reference is made to the *Public Protector South Africa v Commissioner for the South African Revenue Service*, where this court said:

‘Section 17(1) sets out an inflexible threshold to grant leave to appeal. Therefore, the Public Protector must, meet this stringent threshold set out in s 17 of the Superior Courts Act to succeed with her respective application for leave to appeal. This threshold set out in s 17(1) of the Superior Courts Act is now even more stringent than when the now repealed Supreme Court Act 59 of 1959 was still applicable...Section 17(1) uses the word “only”. It provides that:

“Leave to appeal may “only” be given...” and then proceeds to set out the circumstances under which leave to appeal may be given. For instance, in *South African Breweries (Pty) Ltd v The Commissioner of the South African Revenue Services (SARS)*², the Court cited with approval the following passage from *Mont Chevaux Trust v Tim Goosen & 18 Others*, 2014 JDR 2325 [LCC] para [6]:

“It is clear that the threshold for granting leave to appeal against a judgment of the High Court has been raised in the new Act. The former test whether leave to appeal should

¹ Act 10 of 2013.

² [2017] 2 GPPHC 340 (28 March 2017) at paragraph 6.

be granted was reasonable prospect that another court might come to a different conclusion. See *Van Heerden v Cronwright & Others* 1985 (2) SA 343(T) at 34H. 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.”³

7. The court went further and with reference to *S v Smith*, recorded that:

“What the test of reasonable prospects of success postulates is 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. See *S v Mabena & Another* 2007(1) SACR 482 (SCA) para [22]. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”⁴

8. The applicants, respondents in this application for leave to appeal, oppose this application. They say that the applicants for leave to appeal do not rely on any compelling reason/s why leave should be granted. In the second instance, they conclude that the applicants for leave to appeal have failed to meet the stringent test set out in Section 17 (1) (a) (i) and implore the court to dismiss the application for leave to appeal with costs.

9. I now deal with the respondents’ grounds as set out in the respondents’ Heads of Argument. I add to the grounds, the contention about the order and its purported

³ *Public Protector South Africa v Commissioner for the South African Revenue Service* (84074/19) [2021] ZAGPPHC 467 (15 July 2021), at paragraph 6.

⁴ *Ditto*.

limitation on SAMATU's right to communicate with its members and government departments.

(i) Limitation of SAMATU's rights as a Trade Union to communicate with its members and State Departments

10. Although this ground is merely mentioned in SAMATU's Heads and not developed, it is adequately addressed in their application for leave to appeal. Expatiating on this ground, the respondents contend that as a consequence of the order granted, it cannot and may not direct any communication to its own members and to government officials which it, as a Trade Union, is obliged to communicate, if such communication would in any respect interfere with the business of the Applicants, SAMA. They say this is so because, from the orders granted, the interference need not be unlawful but includes conduct termed, 'otherwise'.

11. For the sake of convenience, it is necessary to reproduce the order granted by this court leaving out the part relating to costs:

'2. The First and Second Respondents, and any other member of the First Respondent with its authority or otherwise, are interdicted and restrained from:

2.1 unlawfully or otherwise interfering with the Applicant's business by distributing any communication about the Applicant and its business, either orally or in writing, addressed to the general public, the Applicant's members, including the members of the First Respondent, or the media or any government department and/or government official or otherwise;

2.2 interfering with the rights of the Applicant;

2.3 unlawfully competing with the Applicant; and

2.4 taking any steps whatsoever to encourage members of the Applicant to cancel their existing membership with the Applicant or not to renew their membership. ‘

12. I cannot agree with the interpretation exhorted by SAMATU of the order. It seems to me that on the strength of the word, ‘otherwise’, on its own, instead of reading the whole document, including the order, to ascertain the meaning, SAMATU has simply decided that based on the word ‘otherwise’, lawful communication with its stakeholders is prohibited. This method of interpretation is frowned upon by our courts. I refer in this regard to *Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012), at paragraph 18. There can be no doubt that the order does not limit SAMATU from communicating with its members and government departments. The interpretation sought to be imposed on the order by SAMATU is unsustainable on the principles of interpretation as set out in *Endumeni*. I conclude that there is no merit to the ground and no prospect that another court would come to a different finding.

(ii) Whether the statement published by SAMATU contained falsehoods

13. I follow somewhat the format adopted by the respondents and address this issue under two broad topics. The first has to do with SAMA's right to represent its members in employer and employee matters. The second canvasses the question of coercion on the part of SAMA.

(e) SAMA's right to represent its members in employer / employee matters

14. The respondents in their Heads of Argument went into great detail with reference to the Labour Relations Act, amongst others, and court decisions, to demonstrate how the court erred in its finding. Essentially, the argument raised in the respondents' Heads is about what SAMATU as a Trade Union is permitted to do and why SAMA cannot do what SAMATU is permitted to do as a trade union. Respectfully, these arguments miss completely the statements made in the notice. I do not see the need to re-write the judgement in this regard save to say that the blanket statement made by SAMATU is plain from the notice. The judgement deals with the falsity of the blanket statement that SAMA cannot represent its members in employer /employee matters. The respondents have respectfully failed to demonstrate how the court erred. There is thus no merit to this point and no prospect that another court would come to a different finding.

(b) The question of coercion by SAMA in issuing its renewal notices

15. The judgment canvasses the details of the renewal notice and concludes that SAMA can in no way be said to have coerced members of SAMATU to terminate their membership. Against this finding, the respondents have simply failed to demonstrate how the court erred. There is no merit to this ground and no prospect that another court would come to a different finding.

D. Conclusion

16. For all the reasons set out in this ruling, the application for leave to appeal falls to be dismissed.

E. Order

17. The application for leave to appeal is dismissed with costs

N.N BAM
JUDGE OF THE HIGH COURT,
PRETORIA

APPEARANCES:

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