

DISTRIBUTABLE (90)

EX-TEMPORE

**MEDSON MPOFU
v
NATIONAL SOCIAL SECURITY AUTHORITY**

**SUPREME COURT OF ZIMBABWE
BULAWAYO: 21 OCTOBER 2021**

The applicant in person

N. Mugandiwa with *S Bhebhe*, for the respondent

IN CHAMBERS

MATHONSI JA: This is an application for leave to appeal to the Supreme Court against the judgment of the Labour Court which declined jurisdiction to entertain an application brought before it by the applicant. The applicant had sought damages for discrimination in terms of s 5 (4) as read with s 89 (2) of the Labour Act [*Chapter 28:01*].

The Labour Court found that it could not be engaged as a court of first instance in a claim for damages made in terms of s 5 (4) as such a claim should be brought first to a Labour Officer for conciliation and either be referred to arbitration, that is, in terms of the old provisions of the Labour Act or that the Labour Officer produces a draft ruling for confirmation by the Labour Court.

The applicant was aggrieved by that decision and sought leave to appeal to this Court on four grounds. Leave to appeal was refused by the Labour Court on the basis that the applicant enjoys no prospects of success on appeal.

The applicant has now approached this Court in terms of s 92F (3) for leave to appeal. The application is opposed by the respondent.

In an application of this nature an applicant must satisfy the court that he or she has prospects of success in the intended appeal before the court can grant leave to appeal. In other words, this court performs a gate-keeping function to keep out any proposed appeals without merit. This is done in order to avoid clogging the appeals roll with cases which will not succeed.

The question which arises therefore is whether the applicant has shown prospects of success on appeal. One has to examine whether it was competent for the Labour Court to entertain the application for damages in the manner that it was brought.

In terms of s 5 (4) of the Labour Act, any person who is aggrieved by any act or omission of an employer in contravention of subs (1) of s 5 shall be entitled to claim or apply under Part XII of the Act, *inter alia*, for damages.

Part XII deals with resolution of disputes and unfair labour practices. It is the part that requires a dispute to be brought to a Labour Officer for conciliation and the procedure that is followed thereunder.

Clearly, therefore, the applicant brought the claim for damages pre-maturely before the Labour Court. The court could only be engaged in that regard after conciliation proceedings or after arbitration in terms of the old provisions of the Act.

The Labour Court cannot be faulted for declining jurisdiction because the applicant had not exhausted domestic remedies available to him. Any intended appeal has no prospects of success. I am therefore unable to grant leave to appeal. While costs should ordinarily follow the results, I am not persuaded that they should be on the adverse scale as urged by Mr *Bhebhe* for the respondent.

Accordingly the application is hereby dismissed with costs.

Kantor & Immerman, respondent's legal practitioners