



REPUBLIC OF SOUTH AFRICA  
IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT DURBAN

Not Reportable

CASE NO: D529/11

In the matter between

**ANTHONY ROBIN BRINK**

**Applicant**

and

**LEGAL AID SOUTH AFRICA**

**Respondent**

Heard: In chambers

Delivered: 27 November 2014

Summary: Application for leave to appeal – matter concerns a claim based on unfair discrimination under section 6 (1) of the Employment Equity Act – was a failure to appoint him to the post of Senior Litigator unfair discrimination on prohibited grounds namely, his conscience, belief or political opinion – whether applicant has shown reasonable prospects of another court reaching a conclusion materially different from one reached by this court – no prospects - application dismissed.

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**JUDGMENT**

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CELE J

## Introduction

- [1] Twelve grounds of appeal have been outlined and expatiated upon by the applicant in his application for leave to appeal against a final decision of this court dated 18 September 2014. The applicant further seeks to be granted leave to lead further evidence. The respondent did not oppose this application.
- [2] In his introductory note to the application the applicant articulates a difficulty he experienced in obtaining a transcript of the trial. This court had no reason to order one of the litigants before it, the respondent, to supply the applicant with a copy of the trial record free of charge.
- [3] In summary, the pleaded case of the applicant when seen against his final version was that, on learning of applicant's identity, Mr Nair exercised his prerogative not to agree with the applicant's appointment by aborting his recruitment by camouflaging the true reason for such refusal as lack of funding.
- [4] Through circumstantial evidence the applicant had to prove the allegation that he was unfairly discriminated upon by the respondent<sup>1</sup>. The amendment to section 11 which the applicant refers to in the application for leave to appeal came into effect after all evidence had been led, closing submissions had been made and the judgment was reserved for consideration. The amendment is clearly not retrospective.
- [5] The applicant has not succeeded in showing that the Labour Appeal Court is likely to reach a conclusion materially different from the one this court reached in this matter, with particular reference to paragraphs 68 to 72 of the judgment sought to appeal against. In my view, these findings constitute the critical and decisive findings on which the allegations of unfair discrimination depended. To the extent that the onus of proof might be said to have lied on the respondent as contended by the applicant, evidence showed on a balance of probabilities that the respondent discharged the same and such evidence on alleged

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<sup>1</sup> In terms of section 11 of the Employment Equity Act number 55 of 1998, the Act.

discrimination evinced that the applicant's version was a mere speculation. I consider that the further elaborate submissions of the applicant do not take the matter any further.

[6] The result is that:

1. The application for leave to appeal and to lead further evidence is dismissed.
2. This application was unopposed and so no costs order is made.

Cele J

  
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Judge of the Labour Court of South Africa.

## Appearances

For the applicant: in person

For the respondent: Adv. P.Mokoena SC and Adv. T.Machaba