

SOUTH AFRICA / JUDGMENT

Marce Fire Fighting Technology (Pty) Ltd v Du Toit and Another (J1336/23) [2024] ZALCJHB 221 (24 May 2024)

[2024] ZALCJHB 221

COURT

Labour Court Johannesburg

BEFORE

D Mahosi

CASE / FILE NUMBER

J1336/23

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IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J1336/23

In the matter between:

MARCÉ FIRE
FIGHTING TECHNOLOGY (PTY) LTD
Applicant
(Registration
No. 2015/031115/07)
and
CHARL
DANIEL DU TOIT
First
Respondent
MARCÉ PROJECTS
(PTY) LTD Second
Respondent
(Registration No.
2008/018448/07)

Delivered:

This judgment was handed down electronically by circulation to the parties' legal representatives through email. The date and time for hand-down is deemed to be 24 May 2024.

JUDGMENT

MAHOSI, J

[1] The applicant seeks leave to appeal against the judgment and order of this Court issued on 30 November 2023, in terms of which an application to enforce a restraint of trade agreement and confidentiality undertakings concluded with the first respondent, Mr Charl Daniel Du Toit, was dismissed. The application is unopposed.

[2] Section 166(1) of the Labour Relations Act (LRA)[1] provides for a party to proceedings before the Labour Court to apply for leave to appeal to the Labour Appeal Court (LAC) against any Labour Court's final judgment or order. Section 17(1) of the Superior Court Act, [2] which applies to the Labour Court regulate instances where the appeal may be granted and it states:

'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.'

[3] Section 16(2)(a) of the Superior Court Act provides as follows:

'(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect, the appeal may be dismissed on this ground alone.

(ii) save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

[4] In *Martin and East (Pty) Ltd v National Union of Mineworkers and Others*, [3] the LAC made it clear that leave to appeal is not simply there for the taking and stated as that:

'...The Labour Relations Act was designed to ensure an expeditious resolution of industrial disputes. This means that courts, particularly courts in the position of the Court a quo, need to be cautious when leave to appeal is granted, as should this Court when petitions are granted.

There are two sets of interests to consider. There are the interests of the parties such as appellant, who are entitled to have their rights vindicated, if there is a reasonable prospect that another court might come to a different conclusion. There are also the rights of employees who land up in a legal "no-man's-land" and have to wait years for an appeal (or two) to be prosecuted.

This was a case which should have ended in the Labour Court. This matter should not have come to this Court. It stood to be resolved on its own facts. There is no novel point of law to be determined nor did the Court a quo misinterpret existing law. There was no incorrect application of the facts; in particular the assessment of the factual justification for the dismissals/alternative sanctions.

I would urge labour courts in future to take great care in ensuring a balance between expeditious resolution of a dispute and the rights of the party which has lost. If there is a reasonable prospect that the factual matrix could receive a different treatment or there is a legitimate dispute on the law that is different. But this kind of case should not reappear continuously in courts on appeal after appeal, subverting a key purpose of the Act, namely the expeditious resolution of labour disputes.'

- [5] The traditional test applicable in determining whether to grant an application for leave to appeal is whether there is a reasonable prospect that another court may come to a different conclusion.[4]
- [6] In this matter, the applicant premised his application on the grounds that this Court erred in accepting that the first respondent's breach of the restraint of trade could merely be historical in nature and the proverbial horse had already bolted. The applicant further submits that the Court erred in failing to find that the first respondent has breached the restraint of trade, alternatively is in breach of the restraint of trade and alternatively that there is a reasonable apprehension of breach of the restraint of trade by him. Lastly, the applicant submits that the Court erred by dismissing the application with costs.
- [7] There is no merit in the applicant's submissions. As such, this Court is not persuaded that there are reasonable prospects that another Court could come to a different conclusion. In addition, there is no compelling reason why the appeal should be heard or conflicting judgments on the matter under consideration. As such, the application ought to be dismissed.
- [8] Regarding costs, the requirements of law and fairness dictate that there should be no order as to costs.

[9] Accordingly, the following order is made:

Order

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

D. Mahosi

Judge of the Labour Court of South Africa

[1] Act 66 of 1995, as amended.

[2] Act 10 of 2013, as amended.

[3] (2014) 35 ILJ 2399 (LAC) at 2405I-2406E.

[4] See Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and others

(1999) 20 ILJ 2889 (LC) at 2890B; Ngcobo v Tente Casters (Pty) Ltd

(2002) 23 ILJ 1442 (LC) at para 2; and Tsotetsi v Stallion Security (Pty) Ltd

(2009) 30 ILJ 2802 (LC) at para 14.

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