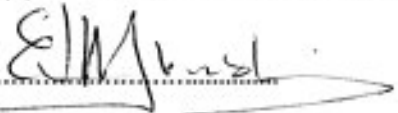




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: 56269/2016

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	
DATE: 29-04-2021	

In the matter between:

DATACENTRIX (PTY) LTD

Applicant

and

O-LINE (PTY) LTD

Respondent

JUDGMENT

KUBUSHI J,

This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.

- [1] The application for leave to appeal is brought by the applicant against the portion of the judgment handed down electronically on 25 January 2021 in which the respondent's claim against the applicant is granted.
- [2] This court has directed that the application be determined on the paper filed without oral hearing as provided for in this Division's Consolidated Directives re Court Operations during the National State of Disaster issued by the Judge President on 18 September 2020.
- [3] The judgment against which leave to appeal is sought arises from a software agreement entered into between the parties. It was not in dispute that the applicant is a recognised installer and configurator of Sage X3 software. In terms of the software agreement, the applicant was to implement Sage X3 software in line with requirements that would be determined during an analysis phase. It was common cause that the Sage X3 software was to be the backbone of the respondent's business. It would enable the respondent to do all manner of financial record keeping, accounting and reporting; record its stock levels; control its inventory; monitor the lead time on items used in its manufacturing process; monitor and plan its manufacturing processes; and do sales and

receipts. Acting in terms of the agreement, and from 2013 and into 2014, the applicant installed and configured the software for the respondent. But, according to the respondent in the trial, the installation and configuration was defective. The respondent alleged that consequent upon these breaches, it was entitled to cancel the agreement, which it duly did on 22 October 2015, and consequently, the respondent claimed repayment of the amounts paid by it to the applicant for the implementation of the SAGE X3 software system. I found for the respondent on all these issues.

- [4] The applicant has approached court for leave to appeal the said judgment in terms of section 17 (1) (a) (i) of the Superior Courts Act 10 of 2013. The sub-section provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success.
- [5] From the case law dealing with the interpretation of the section as regards the test employed for determining whether leave to appeal should be granted, it is evident that the threshold has been raised. The use of the word "would" in the section has been held to denote a

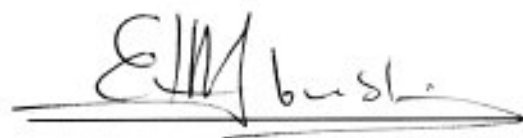
measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. In terms of the section, that there are reasonable prospects of success, should be in the opinion of the judge(s) whose judgment is sought to be appealed. The applicant in the application for leave to appeal must, as a result, convince the judge(s) involved that there are reasonable prospects of success on appeal.

- [6] The grounds for the leave to appeal are succinctly stated in the applicant's notice of application for leave to appeal and need not be repeated in this judgment. The said grounds of appeal have been fully covered and considered in the judgment the applicant seeks to appeal.
- [7] Having considered the grounds of appeal raised by the applicant and the arguments for and against such application raised by the parties in their respective heads of argument, I find that while the applicant criticises the judgment sought to be appealed, it does not show that these criticisms, if justified, have the result that an appeal would have a reasonable prospect of success.

[8] Therefore, in my opinion there are no reasonable prospects of success in the appeal on all the portions of the judgment the applicant seeks to appeal against. This application falls to be dismissed.

[9] In the premises, the following order is granted:

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



E.M KUBUSHI

**JUDGE OF THE HIGH
COURT**

GAUTENG DIVISION, PRETORIA

Appearance:

Applicant's Counsel : Adv. S.D. Wagener SC

Applicant's Attorneys : **A L Maree Incorporated**

Respondent's Counsel : Adv. K.D Iles

Respondent's Attorneys : **Bowman Gilfillan Incorporated**

Date of hearing : 21 April 2021

Date of judgment : 29 April 2021