



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 2177/2019

In the matter between:

JANICE AVRIL CHRISTIANS

Applicant

And

LIESEL THOMAS N.O

1st Respondent

VERNON VAN DER WESTHUIZEN N.O

2nd Respondent

REGINALD THOMAS N.O

3rd Respondent

(In their capacity as trustees for the time being of the
BLOEMSEC TRUST)

JUDGMENT BY:

MHLAMBI J,

HEARD ON:

16 AUGUST 2019

DELIVERED BY:

29 AUGUST 2019

APPLICATION FOR LEAVE TO APPEAL

MHLAMBI, J

- [1] This is an application for leave to appeal a restraint order that I granted with costs on 06 June 2019 in terms of which the first respondent was ordered to immediately cease her employment with the second respondent and not to engage in any of business activity in competition with the applicants within the geographical area of Bloemfontein for a period of 8 months. The application is opposed.
- [2] The grounds of the application for leave to appeal are set out in the notice of application for leave to appeal as follows:
- “5. There is a reasonable prospect that another court would find that the above Honourable Court erred:*
- 5.1 By not finding that the Applicant entered into the agreement in 2018 under duress;*
 - 5.2 By finding that the First or Third Respondents demonstrated a protectable interest in this specific subject matter and circumstances of this case;*
 - 5.3 By not finding that the Applicant poses no threat (ether real or otherwise) to the protectable interest of the Respondent;*
 - 5.4 By weighing-up the First to Third Respondents’ protectable interest qualitatively and quantitatively against the Applicant’s interest to be economically active and productive, and finding in favour of the Respondents;*
 - 5.5 By not finding that the enforcement of the restraint of trade in this specific matter offends against public policy;*

- 5.6 *In finding that the fact stated by the Applicants disclose that the restraint is unreasonable and that the Applicant failed to show that the restraint is unreasonable;*
- 5.7 *In finding that the Applicant should bear the cost of the application in toto;*
- 5.8 *In finding that the Applicant should be liable for the cost of the postponement of the application on 30 May 2019;*
- 5.9 *By failing to consider the personal circumstances of the Applicant and attaching the proper weight to it;*
- 5.10 *By granting the application for the enforcement of the disputed restraint of trade agreement in these specific circumstances despite, inter alia the particular industry, the Applicant's position, the nature of her involvement in the Fourth Respondent, the absence of any confidential information and/or trade secrets".*

[3] The grounds of the application for leave to appeal set out in paragraphs 5.1 to 5.6 are a rehash of the grounds raised by the first respondent in opposition to the relief sought by the applicant in the application. These grounds were fully dealt with in my written reasons delivered on 28 June 2019. Similarly, the grounds set out in paragraphs 5.7 and 5.8, which relate to costs, were also addressed fully in the reasons for judgment. Consequently, I do not consider it necessary to repeat the said reasons in this judgment. In oral address, Mr Roux, on behalf of the applicant, concentrated on the reasons mentioned in paragraphs 5.9 and 5.10 and submitted that, as the applicant was left without resources, another court might put enough emphasis and attach proper weight to the applicant's personal circumstances and, in so doing, come to a different decision.

- [4] Mr Grobler, on behalf of the respondent, referred to various authorities¹ and submitted that the bar for granting leave to appeal has been raised and that the test was not whether there was a reasonable prospect that another court might come to a different conclusion but that there is certainty that another court will differ from the court whose judgment is sought to be appealed against. Section 17(1) of the Superior Court Act 10 of 2013 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. In the **School Governing Body Grey College, Bloemfontein vs Dion Scheepers and Others**², the following was stated:

“This application was predicated upon sections 17(1)(a)(i) and/or (ii). Section 17(1)(a)(i) has not only raised the bar for applications for leave to appeal but also fettered the Judge’s discretion when considering such applications. Leave to appeal may only be given when the Judge or Judges are of the opinion that the appeal would have reasonable prospects of success. The word “only” is indicative of the fact that this section limits the Judge’s discretion to grant leave to appeal. The Judge’s discretion is circumscribed because he or she may not grant leave to appeal based on a reason other than the one mentioned in it. Considerations such as an applicant, for leave to appeal, having an arguable case or that there is a possibility of success on appeal are irrelevant.”

- [5] Mr Grobler submitted further that the applicant did not seek to overturn the decision on the basis that either it was wrong on the facts or on the application of the law. The leave to appeal was sought solely on the grounds of the weight to be attached to the

¹ Hans Seuntjie Matoto vs. Free State Gambling and Liquor Authority and others, case no: 4629/2015 FSHC Delivered on 08 June 2017 para 5; Vukani Gaming Free State (Pty) Ltd vs. Purple Dots Investments 34 (Pty) Ltd and others application number: 1064/2018 delivered on 03 June 2019 para 6.

² Case No 2612/2018 FSHC delivered on 17 January 2019 para 4.

interests of the parties. This approach did not advance the applicant's case.

[6] I have seriously considered the submissions made, carefully reconsidered my judgment and have come to the conclusion that the arguments raised by the applicant are without merit. I have considered whether the appeal would have reasonable prospects of success and I am convinced that there are no reasonable prospects that this appeal would succeed.

[7] I therefor make the following order.

Order

The application for leave to appeal is dismissed with costs.

JJ MHLAMBI, J

Counsel for the defendant: Adv. LA Roux
Instructed by: Rossouw Attorneys
119 President Reitz Avenue
Westdene
Bloemfontein

Counsel for Respondents: Adv S Grobler
Instructed by: Honey Attorneys
Honey Chambers
North Ridge Mall
Bloemfontein