

REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR1309/09

In the matter between:

ANNIELA MAREE

Applicant

and

MONEYLINE FINANCIAL SERVICES

(PROPRIETARY) LIMITED

First Respondent

FINBOND PORERTY FINANCE LIMITED

Second Respondent

JUDGMENT

SHAI AJ

Introduction

[1] This is an application for leave to appeal against the whole judgement including the cost order made by the Court on 12 August 2011, in which the Court made the following order:

‘(1) The dismissal of the applicant is automatically unfair.

(2) First and Second respondents are ordered to pay applicant compensation equivalent to 17 months remuneration, calculated at her monthly rate as at the date of her dismissal, jointly and severally, the one paying the other being absolved.

(3) First and Second respondent to pay the applicant’s costs in respect of application to compel on opposed basis.

(4) First and Second respondents are ordered to pay the costs of the applicant on client and attorney scale including the cost of a Senior Counsel jointly and severally, the one paying, the other being absolved.’

[2] The applicant favoured by the judgment is opposing the application and has filed the necessary papers in this regard.

Grounds of appeal

[3] The First and Second respondents listed four grounds of appeal as follows:

3.1 The above Honourable Court erred in refusing the respondents' application to amend their pleadings to introduce an alternative defence. If the amendment was granted, the Applicant would not have succeeded in proving that she had been dismissed. In terms of Section 192(1) of the Labour Relations Act 66 of 1995, as amended ("the Act"), the onus rests on an employee "to establish the existence of the dismissal". The applicant would not have been able to discharge this onus.

3.2 The above Honourable Court erred in ordering the Respondents to pay the applicant's costs in respect of the application referred to in paragraph 1 above.

3.3 The above Honourable Court erred and misdirected itself in awarding the Applicant an unreasonably large quantum of the compensation.

3.4 The Court erred in finding that the department in which the applicant was employed, formed part of the business that was transferred to Second Respondent.

The test

[4] The test in the application for leave to appeal was stated as follows in the case of Van der Merwe v Du Plessis:¹

'Leave to appeal is granted only if this Court is satisfied that another Court might reasonably reach a conclusion different from that appealed against.'

[5] Having read the submissions from both parties and the judgement herein, and having applied my mind thereon, I am satisfied that no other Court will reasonably reach a different conclusion than the one the Court reached. I am aware of the fact that in matters of compensation, any Court may come to a different conclusion, however due to the manner in which the dismissal was effected and the conduct of the respondents in connection therewith leads me to the conclusion that no other Court would reach a different conclusion.

[6] In the premise, the order is as follows:

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

SHAI AJ

ACTING JUDGE OF THE LABOUR COURT

Appearances: No appearances – decided on paper.

1 (1999) 20 ILJ 1305 LC para 4 at 1306.

