



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

Not reportable

CASE NO: J 2463/2010

In the matter between:

JJA BEZUIDENHOUT

APPLICANT

and

ECONOFLEX (PTY) LTD

RESPONDENT

Date of ruling: 29 April 2013

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

- [1] This is an application for leave to appeal against the whole of the judgment of this court delivered on 8 March 2013. In its judgment, the court dismissed a claim brought in contract for some R1.6 million, principally on the basis that what the applicant sought was a claim of specific performance, there being no tender of services on his part. The court found further that to the extent that specific performance was a discretionary remedy, the matter was not one in which a discretion ought to be exercised in favour of the applicant, whose real claim was

one for damages. The reasons for the court's finding appear in the judgment, and I do not intend to repeat them here.

- [2] The applicant submits that the court failed to apply its mind in a number of respects. All of these submissions relate to the evidence led, and in essence, amount to a proposition that another court might reasonably take a different view of the facts. This submission ignores the basis of the court's finding, one based on a legal proposition not dependent on any particular factual finding. In essence, the court found that the applicant's failure to tender his services was fatal to his claim. The composition of the applicant's remuneration package is not relevant to this issue, nor is the fact that he had been suspended by the respondent. What the applicant failed to do was to claim specific performance as against a tender to work.
- [3] To the extent that the application for leave to appeal relies on an inappropriate degree of intervention by the court in the proceedings, the same point holds. In any event, in the absence of any legal representation of the respondent and the attempts by clearly inexperienced directors to undertake that task, this court has recognized that it may be necessary to adopt a more inquisitorial approach to ensure that the case is properly and fully ventilated. There is obviously a limit; the court must ensure that an injustice is not done to the other party. No objection to any intervention was taken by the applicant's counsel during the course of the proceedings. Since the applicant clearly did not have any difficulty at that stage, I fail to appreciate how at this point it is an issue that warrants an appeal.

For these reasons, I make the following order:

1. Leave to appeal is refused.

André van Niekerk
Judge of the Labour Court