



REPUBLIC OF SOUTH AFRICA

Not reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 890/2017

In the matter between:

TASIMA (PTY) LTD

First applicant

and

**ROAD TRAFFIC MANAGEMENT
CORPORATION**

First respondent

DEPARTMENT OF TRANSPORT

Second respondent

DIRECTOR GENERAL:

Third respondent

DEPARTMENT OF TRANSPORT

MINISTER OF TRANSPORT

Fourth respondent

EMPLOYEES LISTED IN ANNEXURE

Fifth respondent

"A" TO THE NOTICE OF MOTION

Delivered: 5 June 2016

RULING ON LEAVE TO APPEAL

STEENKAMP J

Introduction

- [1] The first respondent (the RTMC) applies for leave to appeal against the whole of my judgment and order of 25 May 2017. I ordered that:

“63.1 It is declared that, with effect from 5 April 2017, the contracts of employment of the 5th to 84th respondents transferred automatically from the applicant (Tasima (Pty) Ltd) to the first respondent (the Road Traffic Management Corporation) in accordance with the provisions of section 197 of the Labour Relations Act (Act 66 of 1995).

63.2 The RTMC is directed to pay the 5th to 84th respondents from 5 April 2017 to the date of the final determination of the order in subparagraph 1 above:

63.2.1 on a monthly basis on or before the 25th of each month, the amounts set forth under the column headed “Monthly CTC excl 13th cheque, annual bonus, overtime, standby allowance, birthday voucher and night shift allowance” as set out in Annexure “C” to Annexure “FM 11.6” to the founding affidavit of Fannie Lynen Mahlangu; and

63.2.2 on an annual basis, any additional amounts making up the column headed “Annual Total CTC” as set forth in that schedule.

63.3 The confidentiality regime set out in paragraph 107 of the founding affidavit applies.

63.4 The RTMC is ordered to pay the costs of this application, including the costs of two counsel, and including the costs of 5 May 2017.”

Test on appeal : the merits

- [2] Applications for leave to appeal are now governed by s 17 of the Superior Courts Act.¹ Section 17(1)(a) provides that:

“Leave to appeal may only be given with a judge or judges concerned are of the opinion that:

- (i) the appeal would have a reasonable prospect of success; or

¹ Act 10 of 2013.

- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgements on the matter under consideration.”

[3] In this case, the matter concerns the interpretation of s 197 of the Labour Relations Act.² It raises a novel argument about the application of the section to matters involving public authorities. That in itself is a compelling reason why leave to appeal should be granted.

Interim relief : para 63.2 of the order

[4] Given my view that leave to appeal should be granted, the question arises whether the relief ordered in paragraph 63.2 of the judgement should operate as an interim order pending the date upon which any appeal is finalised.

[5] Section 18.3 of the Superior Court Act provides :

“(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1)—

(i) the court must immediately record its reasons for doing so;

(ii) the aggrieved party has an automatic right of appeal to the next highest court;

² Act 66 of 1995.

(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

(iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.”

- [6] The default position is that outlined in subsection (1), i.e. that the operation and execution of the order is suspended pending appeal, unless this court under exceptional circumstances orders otherwise.
- [7] The RTMC argues that that subsection applies to the whole of the judgement and order *a quo*, including the interim relief ordered in paragraph 63.2, as Tasima has not brought an application in terms of section 18(3).
- [8] It is so that Tasima has not brought a formal application under s 18(3). But the order in paragraph 63.2 is interim in nature. And in terms of s 18(2) “the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.”
- [9] In its argument *a quo*, Tasima specifically asked for the relief in paragraph 63.2 in order to provide interim protection to the employees regardless of any further steps taken by the RTMC. In my debate with Mr *Franklin* he specifically confirmed that “the date of the final determination of the order in subparagraph 1 above” was intended to include any appeals. Counsel for RTMC did not argue that such an order could not be granted.
- [10] The interim relief sought was foreshadowed in Tasima’s founding papers, when it said:

“Tasima also prays for the Tasima employees’ salaries to be paid by the RTMC with effect from 5 April 2017 pending any final determination, including appeals, in relation to the section 197 dispute.”

[11] In its answering affidavit, the RTMC did not raise a point that such interim relief would be impermissible.

[12] I understood the words “final determination” to include any appeals. That is why I specifically ascertained from Tasima’s counsel that that was what he had in mind. It is similar to the order made in *Auction Alliance (Pty) Ltd v Minister of Police*.³

Conclusion

[13] I am of the view that leave to appeal should be granted on the merits. However, that will not include the whole of the judgement and order; paragraph 63.2 of the order is not appealable.

Order

Leave to appeal is granted against the whole of the judgement and order of 25 May 2017, except for paragraph 63.2 of the order. Costs of this application are to be cost in the appeal.

Anton J Steenkamp
Judge of the Labour Court of South Africa

³ 2014 JDR 2675 (WCC) par 54.

APPEARANCES

APPLICANT (Tasima): A E Franklin SC, J P V McNally SC
and A W T Rowan

Instructed by Webber Wentzel.

FIRST RESPONDENT (RTMC): A Redding SC and K Hopkins

Instructed by Dexter Selepe.

LABOUR COURT