

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JS 581/15

In the matter between:

**DBT TECHNOLOGIES (PTY) LIMITED t/a
DB THERMAL REG NO. 2006/028250/07**

Applicant

and

MARIELA GARNEVSKA

Respondent

Decided: In Chambers

Delivered: 08 June 2018

JUDGMENT: LEAVE TO APPEAL

MABASO, AJ:

[1] This is an application, by DBT Technologies (Pty) Limited, for leave to appeal against the judgment and order handed down by this Court on 26 January 2018., wherein this Court concluded that based on the evidence presented before it by both parties, the dismissal of the respondent herein was automatically unfair and the applicant was ordered to pay the respondent compensation equivalent to 9 months of her remuneration calculated from the time of her dismissal, that this

amount be paid within 30 days of this order and that there was no order as to costs.

[2] On the other hand, Ms Mariela Garnevska delivered a conditional application for leave to appeal stating that this Court was lenient with the applicant in that after concluding that the dismissal was automatically unfair it should have ordered the maximum compensation which is 24 months and costs order against it. In her written submissions, the respondent *inter alia* says “...if leave to appeal was granted in favour of the Applicant, and in such instance only...” her leave to appeal may be entertained. I am therefore required first to decide the applicant's leave to appeal and only if I agree with it, based on the grounds raised, then I can proceed to decide on the respondent's application for conditional leave to appeal.

[3] Section 17 of the Superior Courts Act¹, regulates an application of this nature, and it reads thus:

'17. Leave to appeal.

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

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

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties'.

¹ Act no 10 of 2013

[4] I do not intend to deal with each of the grounds of appeal by the applicant separately. After careful consideration of the grounds for leave to appeal as raised by the applicant against both the judgment and order, there is nothing that persuades this Court that the Labour Appeal Court would overturn both the judgment and the order, in favour of the applicant, and this Court has applied its mind on all the issues that it was required to decide.

[5] As the respondent's leave to appeal was a conditional one, under the circumstances I do not deal with it as I have already made the finding that I do not agree with the applicant's grounds for leave to appeal.

[6] In the premises, I make the following order:

Order

1. The applicant's application for leave to appeal is refused.
2. The respondent's conditional leave to appeal is struck off the roll.
3. There is no order as to costs.

S Mabaso
Acting Judge of the Labour Court of South Africa