



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-009346

In the matter between:

BACKSPORTS (PTY) LTD

Applicant

and

OFENTSE RETSHIDISITSWE MOTLHANKE

First Respondent

O MEDIA VISUALS (PTY) LTD

Second Respondent

Heard: In Chambers

Delivered: 28 March 2025

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

MAKHURA, J

[1] This is an unopposed application for leave to appeal against the whole of the judgment and order of this Court handed down on 18 February 2025. In terms of that judgment, this Court dismissed with costs the applicant's application to enforce a restraint of trade agreement against the first respondent.

[2] The primary finding of the Court was that the applicant did not establish that it had a protectable interest. The Court further held that even if the first respondent was seen doing work that 'competes' with the applicant, the fact remained that the applicant failed to establish that it has a protectable interest. Thirdly, it was held that in any event it would be unreasonable to enforce the restraint agreement against the first respondent after the applicant terminated his employment contract. Finally, the Court declined to entertain the application to interdict the first respondent from uttering threats against the applicant's employees, harassing the applicant and its directors and employees and damaging or sabotaging the applicant's assets, on the basis that it lacked jurisdiction because there is no employment relationship between the parties.

[3] The applicant alleges that the Court erred in arriving at the above findings. The grounds upon which leave to appeal and the written submissions filed in support of the application have in my view been comprehensively addressed in the main judgment. The applicant has in my view misconstrued the legal principles applicable to applications to enforce restraint agreements.

[4] In determining this application, I considered the test for applications for leave to appeal, which is well established as set out under section 17(1) of the Superior Court Act.¹ Section 17(1) provides that:

'Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

¹ Act 10 of 2013; see also: *Nxumalo v National Bargaining Council for the Chemical Industry (NBCCI) and others* [2016] ZALCJHB 212 at para 3; *Seatlholo and others v Chemical Energy Paper Printing Wood and Allied Workers Union and others* (2016) 37 ILJ 1485 (LC) at para 3; *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and others* 2013 (6) SA 520 (SCA) at para 24 where the Supreme Court Appeal remarked that the need to obtain leave to appeal is a valuable tool that ensures that scarce judicial resources are not spent on appeals that lack merit.

- (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...'

[5] Having considered the application for leave to appeal, the test applicable to the application and having reflected on the main judgment, I am not persuaded that the appeal would have a reasonable prospect of success nor am I persuaded that there is any other reason that would compel the matter being sent to the Labour Appeal Court. Accordingly, the application for leave to appeal falls to be dismissed.

[6] In the premises, the following order is made:

Order:

1. The application for leave to appeal is dismissed with no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa