



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable
Case no: J 1153/16

In the matter between:

BENCHMARK SIGNS INCORPORATED

Applicant

and

MULLER DANIEL

First Respondent

SEEK GROUP (PROPRIETRY LIMITED)

Second Respondent

Considered in chambers

Delivered: 30 September 2016.

LEAVE TO APPEAL: JUDGMENT

MOLAHLEHI, J

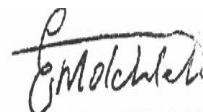
- [1] This is an application for leave to appeal against the judgment of this court made on 07 July 2016. The judgment was consequent the urgent application which the applicant had instituted against the first respondent in terms of which it sought a restraint of trade order.
- [2] The restraint of trade order was sought on the basis that the first respondent, who had signed a restraint of trade agreement breached that agreement soon after his resignation as the employee of the applicant. The essence of the applicant's complaint

was that soon after his resignation or that during the course of his employment he had set up a business in competition with that of the applicant in contravention of the restraint of agreement.

- [3] The court dismissed the applicant's application with costs. The reasons for that decision are set out in the judgment and are not repeated in this judgment.
- [4] The applicant has now filed the present proceedings in which it has raised several grounds for leave to appeal. The grounds for leave to appeal are set out in the applicant's papers. I do not deem it necessary repeat the same this judgment.
- [5] In determining an application for leave to appeal the court has to consider whether there are reasonable prospects that another court may come to a different conclusion to that reached in the judgment that is being challenged.
- [6] Section 17 of the Superior Courts Act, 10 of 2013, provides:
 - "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."
- [7] In considering the submission made by the applicant and the judgment of this court I am persuaded that there are reasonable prospects that another court, in considering the facts that served before this court, may arrive a different conclusion to the of this court. It is for this reason that I find that the applicant has made out a case for leave to appeal.

Order

- [8] In the premises leave to appeal to the Labour Appeal Court is granted.



E Molahlehi, J
Judge of the Labour Court of South Africa

Appearances: Matter considered in chambers.

LABOUR COURT