

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

**CASE NO: J 1676/19**

In the matter between:

**CHRISTOFFEL GERHARDUS BOTHA**

**t/a TAX CONSULTING SA**

**Applicant**

and

**CHRISTOPHER JAMES MGLURE**

**RENWICK**

**Respondent**

**Date of ruling: 26 November 2019**

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**RULING: APPLICATION FOR LEAVE TO APPEAL**

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**VAN NIEKERK J**

- [1] The applicant seeks leave to appeal against the whole of the judgment delivered by this court on 20 August 2019. In its judgment, the court dismissed, with costs, an application for an interim order directing the respondent to pay the sum of R

297 857.08 into trust pending the outcome of the resolution of a dispute between the parties concerning the payment of a bonus by the applicant to the respondent.

- [2] The material facts are recorded in the judgment and do not warrant repetition. In essence, the applicant sought to have an amount equivalent to the net of a bonus paid to the respondent on 5 July 2019 paid into the trust account of its attorney, pending the outcome of an action in which it would seek to recover that amount from the respondent. The applicant alleged that the respondent was obliged in terms of the applicable policy to repay the bonus on his later resignation from the applicant in July 2019. The applicant's grounds for leave to appeal are that the court erred first, in evaluating whether the applicant had established a clear right (as opposed to a *prima facie* right) to the relief sought; secondly, in finding that the applicant sought an anti-dissipation order; thirdly, that the applicant had failed to establish any apprehension of harm; fourthly, in finding that there was a dispute of fact on any material issue on the papers; and finally, in finding that the applicant should pay the costs of the application.
- [3] The judgment clearly discloses that the nature of the proceedings, in the absence of any clarity in the founding appears, were such that the applicant appeared to seek interlocutory relief in the form of an anti-dissipation order, or security for a future judgment, or some combination of the two. To the extent that the applicant was required to meet the threshold for interim relief (this is the basis on which the case was presented and argued), in paragraph 27 of the judgment, the court makes clear that in its view, the applicant failed to clear the hurdle of establishing a *prima facie* right though open to some doubt, particularly since the policy relied upon made no express reference to retention as a fundamental purpose. On the contrary, the policy was driven by performance, and it was not in dispute that both the applicant and the respondent on his individual capacity had met the required performance targets. In so far as the apprehension of harm is concerned, as the court observed, the facts disclosed did not support the conclusion that any harm that the applicant might suffer should the order be

refused was irreparable. As far as factual disputes are concerned, the judgment clearly discloses that the merits of the application were decided on the applicant's own version. There was no need to apply the test in *Webster v Mitchell*, or to refer the matter to oral evidence. It follows that the applicant has not made out a case for leave to appeal, and that the present application stands to be dismissed.

- [4] Finally, there is no reason to deny the respondent the costs of opposition to this application.

I make the following order:

1. Leave to appeal is refused, with costs.

André van Niekerk

Judge