



Reportable

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

Case no: JS 1505/16

In the matter between:

**MOQHAKA LOCAL MUNICIPALITY**

**Applicant**

and

**FUSI JOHN MOTLOUNG**

**First Respondent**

**SHERIFF OF THE HIGH COURT  
KROONSTAD**

**Second Respondent**

**ABSA BANK LIMITED**

**Third Respondent**

**REGISTRAR OF THE LABOUR  
COURT**

**Fourth Respondent**

**Heard:** 22 July 2016

**Delivered:** 14 October 2016

**Summary:** (Set aside a writ of execution – writ deemed to have been issued under s 143(1) of the LRA – assistant registrar issuing writ in error – writ reviewed and set aside. Assistant registrar not empowered to decide if provisions of s 145(8) relating to security have been met)

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**JUDGMENT**

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## LAGRANGE J

### Introduction

- [1] When the matter was heard on 22 July 2016, an interim order was issued pending the finalisation of this application, effectively staying the execution of a writ issued by the Registrar of the Labour Court, or other steps to enforce an arbitration award, which is the subject matter of a pending review application under case number JR 583/16.
- [2] The crux of the application is that, the applicant ('the municipality') claims that the writ of execution issued on 25 June 2016 by the office of the Registrar of this Court was unlawful and invalid.

### Background

- [3] For the sake of contextualising the application, it is necessary to briefly summarise the sequence of events. In essence, there is little of material substance which is in dispute. All the relevant events took place this year.
- [4] An arbitration award was issued in favour of the first respondent on 24 February in terms of which his dismissal was found to be substantively and procedurally unfair and he was awarded six months remuneration as compensation amounting to approximately R 170,000. By 31 March, the municipality had filed a review application to set it aside.
- [5] After filing the review application, the applicant was advised that it should furnish security equivalent to the award of compensation. With effect from 1 March 2015, the following provisions in the Labour Relations Act, 66 of 1995 (the LRA) apply:

"145. .... (7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).

(8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must—

(a) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or

(b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.

(9) An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award.

(10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2013 and subsection (9) applies to an arbitration award issued after such commencement date.”

(emphasis added)

- [6] On 18 April it furnished a bond of security equivalent to the amount of compensation due to the first respondent in terms of the arbitration award. A deposit of an equivalent amount was made by the applicant into the trust account of its attorneys on 12 April. There was evidence to suggest that the furnishing of the security was conveyed to the first respondent or his attorneys at the time, though the first respondent sought to dispute this. However, it seems to be common cause that proof of the payment of funds into the attorneys trust account was not conveyed to the first respondent until the application was filed.
- [7] The first respondent in the meantime had approached the Registrar of the Labour Court and the assistant registrar issued a writ of execution in respect of the award on 25 June. The writ was served on the municipality on 29 June. The applicant took the view that the writ had been invalidly issued because it had furnished security in compliance with section 145 (8) of the LRA. Accordingly, it contended the operation of the award was suspended in terms of section 145 (7) of the LRA.
- [8] The transcribed records of the arbitration proceedings and a notice in terms of Rule 7A(8)(b) were filed by the applicant on 30 June.
- [9] The applicant's attorneys had communicated with the first respondent's attorneys on 29 June when the writ was served and in a letter on 4 July confirmed having advised them that security had been provided and that the operation of the award was suspended. The letter called upon the first respondent to withdraw the writ failing which the applicant would approach

the Court on an urgent basis to prevent its execution, and warned that it would seek punitive costs against the first respondent if it was compelled to do so.

[10] On 5 July, the applicant obtained a letter from the registrar's office addressed to the sheriff and the Kroonstad's magistrate court's, in which the acting registrar stated:

"Please be advised that the writ of execution bearing case number FS 101509 issued on the 25 June 2016 was erroneously issued as the security bond had already been issued by the registrar on the 18 April 2016.

We therefore advise you that once the security of bond has been issued to the satisfaction of the registrar, the writ of execution or the enforcement of the award will be stayed pending the finalisation of review which had been filed by the Moqhaka Confirmed that the case number JP 583/16.

We therefore advise you not to attach any movable property or bank accounts of the municipality arising from the above-mentioned writ of execution."

(sic)

The applicant forwarded a copy of the letter to the first respondent requesting him to confirm that no further steps would be taken to enforce the arbitration award.

[11] The first respondent queried the existence of the security provided by the applicant on the basis that there was no evidence that money had been paid into the trust account of the applicant's attorneys and expressed doubts whether the applicant's attorneys would be in a position to pay the amount of compensation awarded if the review application was unsuccessful. This stance was repeated in a further letter on 6 July, in which the first respondent made it clear that it did not accept the security bond as sufficient in the absence of proof that such funds were held by the applicant's attorneys. They warned that in the circumstances they saw no reason to stay enforcement of the writ and would ask the registrar to retract the acting registrar's previous letter of 5 July.

[12] On 14 July 2016, apparently prompted by the first respondent's request, the Acting Registrar had a change of heart and addressed a letter to the sheriff of the High Court in Kroonstad in which he stated:

“Please be advised that we wrote a letter instructing the sheriff not to proceed with execution of the writ and we therefore withdraw the letter dated 5 July 2016 as the office of the registrar does not have the authority to stop the sheriff to execute except if there is a court order.”

[13] The applicant decided that in the circumstances, it had no alternative but to bring the urgent application.

### Evaluation

[14] The applicant contends that the writ issued by the registrar was invalid because it was issued in breach of section 145 (7) and 143 (5) of the LRA.

### *Alleged breach of section 143 (5)*

[15] With effect from 1 March 2015, the relevant provisions of s 143(5) of the LRA read:

#### **“143. Effect of arbitration awards**

(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.

(2) If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the award provides otherwise.

(3) An arbitration award may only be enforced in terms of subsection (1) if the director has certified that the arbitration award is an award contemplated in subsection (1).

(4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without

further order, enforce it by way of contempt proceedings instituted in the Labour Court.

(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.

[16] In essence, the municipality contends that the effect of section 143 (5) of the LRA is that the registrar of the Labour Court can no longer issue a writ for the enforcement of an award sounding in money only, because the award must be treated as if it was an order emanating from the Magistrate's Court. Accordingly, the Registrar of the Labour Court has no authority to issue a writ for execution of an award deemed to be the equivalent of an order of a lower court.

[17] The new provisions of section 143 (5) of the LRA have been considered by the Labour Appeal Court in the recent judgment of **CCMA v MBS Transport CC and Others, CCMA v Zheka Management Services (Pty) Ltd and Others**.<sup>1</sup> The LAC in that matter was seized with the question whether or not it was still necessary for a writ of execution to be issued by the registrar of Labour Court before it could be enforced. The court concluded that the words "as if it were" in section 143 (1) were intended to create a legal fiction that a certified arbitration award is deemed to be an order of the Labour Court in respect of which a writ had been issued. The practical effect of sections 143 (1) and 143 (3) is that "... a certified arbitration award may be enforced without the need for a writ to be issued by any court of the CCMA."(emphasis added).<sup>2</sup>

[18] In considering the effect of section 143 (5) of the LRA, the LAC said the following:

"[36] Section 143(1) tells us what the status of a certified award is. Subsections (4) and (5) tell us how it should be enforced. The effect of subsection (5) is, if the certified award to be enforced sounds in money, it is enforced and executed as if it is an order of the Magistrates' Court. It does

<sup>1</sup> [2016] 10 BLLR 999 (LAC)

<sup>2</sup> At paras [28]-[31].

not become an order of the Magistrates' Court. It is still assumed to be an order of the Labour Court in respect of which a writ was issued; however if it sounds in money it is treated for enforcement and execution purposes only as an order of the Magistrates' Court. The words "despite subsection (1)" in subsection (5) makes it plain that despite the assumption in subsection (1) a certified award sounding in money may be enforced and executed as if it is an order of the Magistrates' Court. There are Magistrates' Courts in all districts in the country and this makes the enforcement of certified awards sounding in money accessible to most workers. The enforcement order in terms of section 143 clearly empowers the sheriff to execute in the same manner as would be the case if he or she received a warrant signed and issued by the registrar of the Magistrates Court."

[19] The applicant contends in effect that section 143(5) of the LRA now prescribes the exclusive mechanism for enforcing the arbitration awards. It is evident from the LAC judgement that the object of the amendments was to facilitate the easier enforcement of arbitration awards and to obviate the previous practice which employees had to resort to, of obtaining a writ from the registrar of the Labour Court, and then having to incur the costs of enforcing an order through the office of the sheriff on the High Court tariff of fees. The previous practice was cumbersome and expensive, particularly for litigants living far from the environs of a Labour Court. The new procedure provides a simpler, more streamlined and cheaper method of enforcing awards.<sup>3</sup>

[20] Prior to the amendment of section 143 (1) of the LRA, the section read:

"(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award."

Hence the previous method of enforcement of awards was to ask for a writ to be issued by the registrar of the Labour Court in respect of the certified arbitration award which had been deemed an order of court. Now that a certified award is also deemed to be an order of the Labour Court in respect of which a writ has been issued, it is completely unnecessary and

<sup>3</sup> See paras [22] and [36].

redundant for the registrar of the Labour Court to formally issue a writ in circumstances where one is already deemed to have been issued by law. For the registrar to issue a writ in circumstances where it is already deemed to have been issued once the award has been certified is an exercise in legal superfluity and the formal issuing of a writ by the registrar would have the effect that a second writ is issued where one is already deemed to exist.

[21] In the circumstances, I am satisfied that the registrar would be entitled to refuse to issue a writ of execution for the enforcement of a certified arbitration award sounding in money on the basis that a writ is already deemed to have been issued by this Court and in terms of section 143 (5) of the LRA must be enforced as if the writ had been issued by the Magistrate's Court. On the facts of this matter, the acting registrar ought not to have issued the original writ on 25 June 2016 as the award was already enforceable by means of execution through the office of the sheriff's and his decision to do so was clearly materially influenced by an error of law that it was necessary, which was incorrect. Had he been aware that it was unnecessary for him to issue the writ, he would not have done so.

[22] The Labour Court nevertheless retains the power in terms of s 158(2) of the LRA to make an arbitration award an order of court, in respect of which a writ could be issued, but in light of the new procedures for enforcing awards sounding in money, the instances where the court will be required to exercise this power are likely to be infrequent.

#### *The effect of section 145 (7) of the LRA*

[23] If the writ issued by the registrar was redundant and of no legal effect, then the sheriff has no authority to attempt to execute that writ, but that does not resolve the question whether the operation of the arbitration award is suspended. In terms of the deeming effects of section 143 of the LRA, in the absence of an order of this Court to the contrary, it can still be enforced through the mechanisms provided by that section. That raises the second issue whether the provisions of section 145 (7) of the LRA have been met.

- [24] What that section requires is for the court to be satisfied that the security stipulated in section 145 (8) of the LRA has been provided. The crisp issue in this application is whether, in circumstances where the applicant has furnished a security bond in the amount required under section 145 (8) (b) of the LRA, it is sufficient for the purposes of suspending the operation of the award under section 145 (7) of the LRA that, the Registrar is satisfied that security in terms of section 145(8)(b) has been provided. The municipality contends in effect that once the registrar is satisfied that the security furnished meets the requirement of section 145 (8) (b), then the operation of the award is suspended.
- [25] On a plain reading of the phrase “...unless the applicant furnishes security to the satisfaction of the Court” in s 145(7), the reference to “the Court” is obviously a reference to the “Labour Court” in section 145 (8) which is entrusted with deciding whether or not the amount of security stipulated in sections 145(8)(a) and (b) needs to be provided. Moreover, the form which the security provided under either of those subsections must take is not prescribed by the LRA. Although the furnishing of a bond of security may be the typical and most convenient form of security, other forms of security might also be considered satisfactory, such as depositing funds with the sheriff. Consideration of whether the requirement has been met may entail an evaluation of the form of security provided and in the absence of the registrar being specifically empowered to determine if the requirements have been met, does not seem to fall within the performance of the “administrative functions” of the Labour Court, which is the role ascribed to officials of the Labour Court in terms of s155 (2)(a) of the LRA.
- [26] In conclusion, the registrar or deputy registrar does not have the power to decide if security in terms of section 145 (8) of the LRA, to the satisfaction of the court has been provided.
- [27] Typically, security is often only provided when the applicant is compelled to bring an urgent application to stay the execution of a writ and the security tendered is then placed before a judge in court when the urgent application is considered. The facts of this case are somewhat unusual in that normally if a party has lodged security in the form of a security bond

issued by the applicants attorney of record, as in this case, the employee party seeking to enforce the award will not take any further steps to do so, in the realisation that in all probability the court will accept the form of security provided. The difficulty for an applicant on review is that until the court has made a ruling under section 145 (7) to the effect that it is satisfied that the security provided needs the requirements of section 145 (8), in the absence of an undertaking from the employee party that no further steps will be taken to enforce the award in light of the security provided, the applicant has no guarantee that it will not be surprised by a sheriff arriving at its premises to execute the deemed writ. Unless an alternative procedure is developed, an applicant who cannot secure the agreement of the employee party not to attempt to enforce the award once security has been lodged, will have little option but to approach the court as the applicant did in this case, *albeit* that in this instance, the first respondent was relying on a writ issued by the registrar and not on a writ that was deemed to be issued in terms of s 143(1) of the LRA.

[28] In this instance, I am satisfied that the security bond provided by the applicant's attorneys of record fully meets the requirements of section 145 (8) (b) and that accordingly, the operation of the arbitration award is suspended.

#### Urgency

[29] I am satisfied that in the absence of clear written undertakings by the first respondent and the sheriff that no execution of the writ would take place and that the first respondent would not attempt to enforce the arbitration award pending the outcome of the arbitration, the applicant was at risk at any point of property being attached and was entitled to approach the court on an urgent basis. I am also satisfied that the first respondent had ample time to oppose the application.

#### Costs

[30] The only basis on which the first respondent objected to the satisfactoriness of the security provided was that, it insisted on proof that a sum equivalent to the amount of the security bond have been paid into the

applicant's attorneys trust account. He complained that he only received proof of payment of the amount into the trust account when the applicant served the urgent application, whereas he had received this previously when his attorneys had requested this in early July. Nowhere does he or his attorneys explain why the security bond which was provided was not sufficient evidence of satisfactory security being provided.

[31] The first respondent also claims in his answering affidavit that the sheriff had agreed to stay the execution of the award pending the submission of proof that money had been paid into the applicant's attorneys trust account, though there is no confirmatory affidavit or letter from the sheriff to this effect this.

[32] At the hearing of the matter, the first respondent's representative conceded that the bond of security which was lodged should have been accepted as sufficient proof of adequate security being provided. However, the first respondent had persisted in opposing the application because of the punitive cost order sought by the applicant. Nevertheless, there was no evidence that the first respondent had indicated to the applicant prior to the hearing on 23 July that he would not oppose the main application and was only intending to oppose it if the applicant pursued the costs issue, so the applicant was compelled to prepare for the hearing on the basis that the application was opposed in all respects.

[33] I accept that the first respondent's opposition to the application before it received confirmation of the deposit of monies into the applicant's attorneys trust account, might have been *bona fide* if mistaken. However, once his fears in that regard had been allayed, there was no reason for it to persist in opposing the main relief sought. Accordingly, some salutary cost order is appropriate.

#### Order

[34] The application is dealt with on an urgent basis and the applicant's non-compliance with forms of service and timeframes for bringing such an application under the Labour Court rules is condoned.

[35] The writ of execution issued by the Acting Registrar of the Labour Court on 25 June 2016 (case reference number FSD101509) is reviewed and set aside.

[36] The security bond provided by the applicant's attorneys of record dated 15 April 2016 filed on 18 April 2016 complies with the requirements of section 145 (8) (b) of the LRA and accordingly, the operation of the arbitration award dated 24 February 2016 under case number FSD 101509 is suspended pending the outcome of the review proceedings under case number JR 583/16.

[37] The enforcement of the aforesaid arbitration award is stayed pending the outcome of the aforesaid review proceedings.

[38] The first respondent must pay the applicant's costs of appearing and preparation for the hearing on 22 July 2016 including the costs of counsel.



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Lagrange J

Judge of the Labour Court of South Africa

LABOUR COURT

**APPEARANCES**

APPLICANT:

M Marcus instructed by  
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FIRST RESPONDENT:

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Attorneys

LABOUR COURT