

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

Not Reportable  
Case No: J1299/2023

In the matter between:

**THE MINISTER OF HIGHER EDUCATION AND  
TRAINING**

**First Applicant**

**EKURHULENI EAST TVET COLLEGE**

**Second Applicant**

and

**VOICE OF WORKERS OF SOUTH AFRICA CIVIL RIGHTS  
UNION o.b.o ERIC MNYAMEZELI SHABALALA**

**First Respondent**

**GENERAL PUBLIC SERVICE SECTORAL  
BARGAINING COUNCIL**

**Second Respondent**

**ADV. ITUMELENG KGATLA N.O.**

**Third Respondent**

**PRETORIA CENTRAL SHERIFF**

**Fourth Respondent**

**Heard: 04 October 2023**

**Delivered: 22 January 2024 (This judgment was handed down electronically by circulation to the parties on 22 January 2024.)**

**REASONS FOR ORDER**

**PHEHANE, J**

Introduction

[1] On 4 October 2023, I issued an order dismissing with costs, the applicants' urgent application to stay the execution of an arbitration award. The applicants seek the reasons for my order. Brief reasons follow.

### Background

[2] An arbitration award under the auspices of the second respondent ordered that the first respondent (Mr. Shabalala) be reinstated following a finding of an unfair dismissal. The second applicant advised Mr. Shabalala that it intended to launch an application to review and set aside the arbitration award. Mr. Shabalala applied for a certification of the award in terms of section 143 of the Labour Relations Act<sup>1</sup> (LRA).

[3] The arbitration award was certified on 30 August 2021. A review application was launched under case number *JR1925/21 on 9 September 2021*.<sup>2</sup> A writ of execution was issued on 5 November 2021.

[4] A similar urgent application was launched in this Court under case number J115/21 by the first applicant against the same respondents as in the present case, to stay the enforcement of the arbitration award. The application served before Lagrange J, in which he ordered on 23 September 2021 as follows:

'1. The applicant [is] exempted from non-compliance with the forms and service provided for in the Labour Court ...this matter is disposed of as urgent in terms of Rule 8 of the Labour Court Rules.

2. The enforcement of the award issued by the third respondent under case number GPBC1024/2016 dated 26 April 2021 and certified by the second respondent as binding is stayed pending the outcome of the review application under case number JR1925/21.

3. The applicant must furnish security as required by s 145(7) and (8) of the Labour Relations Act, 66 of 1995 by 30 October 2021.

4. The applicant must file a condonation application for the late filing of the review application by 7 October 2021.

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<sup>1</sup> Act 66 of 1995, as amended.

<sup>2</sup> Founding affidavit, at para 13, on p 13.

5. The order made in terms of paragraph 2 above shall automatically lapse if the applicant fails to comply with the provisions of this order, or fails to prosecute the review application from the date of this judgment onwards in accordance with the Labour Court Rules and the Labour Court Practice Manual insofar as the stipulated time periods for the performance of steps in the prosecution of the review application.

6. ...'

(Emphasis added).

[5] On 5 November 2021, the second respondent issued a writ of execution. At this stage, the applicant had clearly not heeded the warning in the order by Lagrange J that failure to prosecute the review application in accordance with the provisions of the Rules and Practice Manual, would result in the stay of execution lapsing automatically.

[6] The applicant filed a bond of security on 2 December 2022. This non-compliance with the order of Lagrange J in respect of furnishing security is unexplained.

[7] It was only on 12 September 2023 when the fourth respondent arrived at the applicants' premises to attach its assets, that the applicants woke up from their deep slumber and approached this Court on an urgent basis for similar, if not identical relief (insofar as the alternative prayer in the notice of motion is concerned).

[8] This matter was initially heard on 21 September 2023 by Rabkin-Naicker J, who postponed the matter to 4 October 2023 and ordered Mr. Shabalala to file an answering affidavit by 26 September 2023 and stayed the enforcement of the writ pending the finalization of this application. The applicants take issue with Mr. Shabalala not complying with the court order by Rabkin-Naicker J and only filing his answering affidavit on 3 October 2023, after which the applicants filed their replying affidavit on the same date.

[9] Mr. Shabalala sought condonation for the late filing of his answering affidavit. He avers that due to financial constraints, he was unable to file the affidavit timely. The applicants aver that Mr. Shabalala was already granted an indulgence by the Court on 21 September 2023 for the same reason and the matter should proceed on an unopposed basis. In the interests of justice and in order that the matter be fully ventilated, I granted Mr. Shabalala condonation for the late filing of his answering affidavit.

[10] When met with the challenge that they had not complied with the order by Lagrange J, the applicants simply state that they have complied with the order,<sup>3</sup> in that security was furnished. They offer no explanation why they did not furnish security by 30 October 2021 and only filed a bond of security more than a year later. The applicants further state that condonation for the late filing of the review application was delivered- they offer no elaboration whether this condonation application was delivered as per the Court order by Lagrange J. The applicants also aver that an application to reinstate the review application was launched. Despite stating in their founding affidavit that the reinstatement application is attached (and is ready to be heard), it is in fact, not attached – only the index is attached and I add, the case number, being JR2084/21, is a different case number than the review application. It gets worse for the applicant- the index records that the reinstatement application and its supporting affidavit are dated *9 September 2021* and 6 September 2021 respectively. It simply makes no sense that the review application and reinstatement application can be launched on the same date.<sup>4</sup> Mr. Shabalala states that the case number JR2084/2021 does not exist.<sup>5</sup> The applicants do not respond to this allegation in their replying affidavit.

[11] It would appear that the applicants filed an application under the same case number as the review application in September 2022, in terms of section 11.2.3 of the Practice Manual for an extension to file the record. The applicant does not state what the progress of this application is.<sup>6</sup> In any event such application was not made within the time frame as prescribed in item 11.2.3 of the Practice Manual. On the

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<sup>3</sup> Replying affidavit at para 14, on p 108.

<sup>4</sup> See paragraph [3] of this judgment.

<sup>5</sup> Answering affidavit at para 11.8 on p 85.

<sup>6</sup> Founding affidavit at para 21 on p 15.

applicants' own admission, to date, the reconstruction of the record is near impossible and they are still considering to bring an application to compel the second and third respondents to complete the reconstruction of the record.<sup>7</sup> No such application has been delivered to date. Pertinent to the order by Lagrange J, no steps were taken by the applicants in terms of the provisions of item 11.2.4 of the Practice Manual when reconstruction was a challenge.

[12] In the absence of an order reinstating the review application there is effectively no "live" review pending before this Court. Section 145(3) of the LRA provides that this Court may stay the enforcement of an arbitration award pending its decision. In the premises, the application to stay the execution of the arbitration award cannot succeed as there is no review application pending before this Court. The belated filing of security does not help the applicants either, as at the time of its filing, there was no live review application before this Court. Security cannot be furnished where the review application is deemed withdrawn.

[13] The stay imposed by this Court per Lagrange J lapsed automatically. In the circumstances, the attachment by the fourth respondent is by no means unlawful or null and void.

[14] It is for the aforesaid reasons that the application was dismissed.

#### Costs

[15] The applicants are legally represented. They approached this Court two years ago and obtained an order staying the enforcement of the arbitration award. They failed to comply with the provisions of the rules and Practice Manual of this Court, fully aware of the consequences as this was spelt out in the order by Lagrange J. They failed to comply with the Court order. They approach this Court yet again, seeking effectively the same relief in circumstances where they failed to prosecute the review application.

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<sup>7</sup> Founding affidavit at para 38 on p 19.

[16] Mr. Shabalala makes serious allegations against the applicants in respect of case numbers that do not exist, as a ploy to bamboozle him. This is not dealt with by the applicants.

[17] The case numbers referenced by the applicants leave a lot to be desired. It is expected of legal practitioners who draft and settle pleadings to acquaint themselves with the content. The allegations by Mr. Shabalala are not off the mark.

[18] It is due to the conduct of the applicants in proceeding with this application that this Court made an order for the payment of costs.

M. T. M. Phehane

Judge of the Labour Court of South Africa