

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: J602/08

In the matter between:

CHRISTO BOTHMA FINANSIELE DIENSTE Applicant

and

RGP HAVENGA First Respondent

THE DEPUTY SHERIFF, KLERKSDORP Second Respondent

JUDGMENT

FRANCIS J

Introduction

1. This is an urgent application for an order that the warrant of execution issued by the Registrar of this Court under case number J1921/05 be stayed and suspended pending the outcome of an application that the applicant served and filed under case number JA23/2008.
2. The applicant had also sought other relief abandoned during the proceedings. I do not deem it necessary for purposes of this judgment to refer to the said relief.
3. The application was opposed by the first respondent on several basis. The first respondent also raised several preliminary points that in my view are not decisive to the issue that I am required to decide.
4. It became clear during the proceedings that the real issue that I was required to decide

was whether the filing of a petition for leave to appeal with the Judge President of the Labour Court stayed the enforcement of an order issued by this Court. Both parties were ordered to file heads of argument on this issue. These were duly filed.

The background facts

5. Setting out the facts in any great detail is not necessary and I will limit it to the issue that I am required to decide. The first respondent was employed by the applicant. She subsequently resigned and referred a dispute to the Commission for Conciliation, Mediation and Arbitration (the CCMA), under case number NW1164/05. In an arbitration award dated 7 August 2005, the applicant was ordered to pay the first respondent an amount of R87 000.00 on or before 30 September 2005.
6. In October 2005 the first respondent filed an application for review under case number JR2680/05. On or about 20 October 2005, the first respondent filed an application in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 (the Act), to make the arbitration award an order of court. The said application was opposed by the applicant.
7. On 23 February 2007, the arbitration award was made an order of court and the applicant was directed to pay the first respondent an amount of R87 071.38 with costs.
8. On or about 7 March 2007, the applicant applied for leave to appeal against the order made on 23 February 2007.
9. The first respondent subsequently issued a warrant of execution for the payment of the

amount ordered by the court on 23 February 2007. The second respondent on or about 18 April 2007 attached certain goods on the basis that it belonged to the applicant. The applicant's attorney wrote to the first respondent's attorney and pointed out that there was an application for leave to appeal and sought confirmation that the execution of the warrant would be suspended pending the outcome of the application for leave to appeal. The first respondent did not proceed with the attachment.

10. The application for leave to appeal was dismissed on 27 March 2008.
11. On 4 April 2008 the second respondent called at the applicant premises and removed all of the applicant's clients files (hard copies) amounting to approximately 300 in total; an HP laptop computer with a charger that belongs to a lady who works for the applicant on a contract basis to perform its administrative duties and a 1 X LG Computer, which contains all the information about the applicant's business activities, which by its removal renders any further operations by the applicant impossible. The applicant claims that the files removed, *inter alia*, contain the financial information of the applicant's clients as required by the Financial Intelligence Centre, 2001 (FICA), and as can be seen from the estimated value attached to it, is virtually worthless to anybody except the applicant. The first respondent's attorney agreed that once the applicant had paid an amount of R45 000.00 the attached property would be returned. An amount of R45 000.00 was deposited into the trust account of the first respondent's attorneys. The goods were not returned on the basis of a second warrant issued for the payment made in terms of case number J1921/05 in the section 158(1)(c) application. The first respondent contended that because the applicant's application for leave to appeal was dismissed it

was proceeding with the warrant of execution issued under case number J1921/05. It would not instruct the Sheriff to suspend the execution of the writ of execution under case number J1921/05 and any application would be opposed. Further that the petition for leave to appeal did not automatically stay the writ of execution issued under case number J1921/05.

12. On or about 8 April 2008 the applicant filed a petition for leave to appeal with the Judge President of the Labour Court under case number JA23/08.

Analysis of the facts and arguments raised

13. It is common cause between the parties that the applicant's application for leave to appeal was dismissed and that the applicant had filed a petition for leave to appeal with the Judge President of the Labour Appeal Court. It is clear from the facts placed before me that the warrant of execution that the applicant's wants to be stayed relate to the award made an order of court.
14. The real issue that arises in this matter is whether the filing of a petition for leave to appeal stays the enforcement of the order issued by this Court. Should the filing of the petition stay the enforcement of the order it follows that the application should succeed.
15. It is trite that an application for leave to appeal in the High Court stays the enforcement of a court order and any subsequent writ of execution issued against that party, which forms the subject of an application for leave to appeal. This is so in terms of Rule 49(11) of the High Court Rules. There was a measure of uncertainty about whether the filing of a

petition for leave to appeal would also stay the enforcement of an order. In *Claude Neon Ltd v Europa Acceptances Group Ltd* 1992 (2) SA 287 WLD, Marais J Court found that there were two conflicting decisions in the Transvaal Provincial Division and in the Witwatersrand Local Division on this point. In the matter of *Jewellery Investments (Pty) Ltd v Southern Sun Hotel Corporation* 1992(2) SA 291 (W), Goldstone J held that such a petition did suspend the operation of the judgment, it being covered by Rule 49(11) of the High Court Rules. In the matter of *Van der Walt v Kolektor (Edms) Bpk en Andere* 1989 (4) SA 690 (T), De Villiers AJ concluded in the absence of any reported authority that such a petition did not have the effect of suspending the judgement and that the provisions of Rule 49(11) of the High Court Rules were not applicable to such a petition. Marais J said that he was in respectful agreement with the judgment of Goldstone J in the *Jewellery Investments case* where the Court said that the words “application for leave to appeal” would include an application for leave to appeal made to the Chief Justice by way of petition.

16. It is trite that the Labour Court has equal status as a High Court. It is a specialised court. Where an application for leave to appeal has been refused by a judge of the Labour Court, the Judge President may be petitioned for leave to appeal. In terms of Section 67(2) and (3) of the Act, the Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by this Court in respect of matters within its exclusive jurisdiction and the Labour Appeal Court is a superior court that has authority, inherent powers and standing in relation to matters under its jurisdiction, equal to that which the Supreme Court of Appeal. (However I am aware of the judgments that have confirmed that the Supreme Court of Appeal is the final court of appeal in non constitutional

matters. It has no bearing on the issue that I am required to decide).

17. The Rules of this Court are silent about whether an application for leave to appeal stays proceedings. This Court does not have a similar provision like Rule 49(11) of the High Court Rules. However Rule 11(3) of the Rules of this Court, states that if a situation for which the Rules do not provide arises in proceedings or contemplated proceedings, the court may adopt any procedure that it deems appropriate in the circumstances. I am of the view that Rule 49(11) of the High Court Rules should also be adopted by this Court.
18. In my view, the filing of a petition to the Judge President of the Labour Appeal Court is equivalent to leave to appeal. The filing of a petition to the Judge President of the Labour Appeal Court stays the enforcement of orders pending the outcome of the petition that is currently serving before the Labour Appeal Court. I am therefore in agreement with the judgments of Marais J and Goldstone J referred to in paragraph 15 above.
19. The application stands to be granted.
20. I do not believe that this is a matter where costs should follow the result. The law about what effect the filing of a petition has in this Court was unclear and the first respondent's opposition was not frivolous.
21. In the circumstances I make the following order:

21.1 The execution of the order made under case number J1921/05 is stayed pending

the outcome of the petition for leave to appeal which is currently before the Labour Appeal Court.

21.2 There is no order as to costs.

FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR THE APPLICANT : ATTORNEY E H LOUW

FOR FIRST RESPONDENT : ATTORNEY WP SCHOLTZ OF JANSENS INC

DATE OF HEARING : 18 APRIL 2008

DATE OF JUDGMENT : 23 APRIL 2008