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Delivered 160211

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO JR 1194/2010

In the matter between:

THE PREMIER OF LIMPOPO PROVINCE

Applicant

and

THIVHAKONI DAVID MAKGOKA

First Respondent

GENERAL PUBLIC SERVICE

SECTORAL BARGAINING COUNCIL

Second respondent

THE REGISTRAR, LABOUR COURT

OF SOUTH AFRICA

Third Respondent

SHERIFF OF THE HIGH COURT FOR THE

DISTRICT OF POLOKWANE

Fourth Respondent

JUDGMENT

[1] This is an application that has its roots in a judgment given by Lagrange J on 29 June 2010. The applicant had brought an urgent application to stay a writ of execution issued in respect of a settlement agreement between the applicant and the first respondent. The settlement agreement had been made in terms of an arbitration award in terms of s 143 (3) of the Labour Relations Act 66 of 1995 ('the LRA'). The applicant sought to have the writ set aside pending an order that it had complied with the award, alternatively, remitting the matter back to the second respondent (the

bargaining council) to determine the quantum of the settlement between the applicant and the first respondent.

[2] In his judgment, Lagrange J issued an order staying the writ of execution issued by the registrar of this court pending a determination of the quantum of the settlement agreement and whether it had been complied with by the applicant. The dispute over the determination of the quantum of the settlement agreement was set down for hearing on the opposed motion roll on 11 November 2010. Finally, Lagrange J gave directions as to particular issues that the parties were required to address in the supplementary papers. The parties filed further papers as directed.

[3] The factual background is set out in the judgment by Lagrange J and I do not intend to repeat them in any detail. In brief, the first respondent attended a course in India from one February to 31 October 2008. The cost of the course, travel and accommodation and a living allowance were met by the High Commissioner for India. On his return to South Africa, the applicant claimed a subsistence allowance for the time spent in India. There was a dispute about the tariff to be applied. This was referred to the bargaining council as an unfair labour practice dispute. The dispute was ultimately referred to arbitration. The parties settled the dispute on terms that recorded that *"the applicant/employee will be paid his subsistence and travelling allowance for the period 1 February 2008 to 31 October 2008 using the tariffs and rates that were applicable to the official trips outside the RSA as contemplated in Annexure A of the Financial Manual."* As I have noted above, the settlement agreement was made an arbitration award in terms of s 143. Soon after the settlement was concluded, it became apparent that the parties had different views on the amount that was payable to the applicant. In short, the applicant claims that it has satisfied the terms of the settlement agreement by paying the applicant the amount of R 20 767, 61, a reduced special daily allowance, taking into account that the High Commission for India sponsored the first respondent's trip. The applicant interprets the agreement differently and claims the sum of R 208 744, 92. On 20 May 2010, the registrar issued a writ of execution in the latter amount in response to an affidavit deposed to by the applicant in which he stated that he was entitled to be paid the amount in respect of which the writ was sought, as a subsistence allowance while in India during 2008.

[4] I deal first with the writ of execution. In *Butchard v Butchard* 1996 (2) SA 581 (W) Wunsh J stated:

*... There is no reason in principle or practice why a judgment or payment of a category of expenses which can be quantified without difficulty should not be able to sustain a writ, if the accrual and the amount of the expenses, on the basis of which liability therefore is established in a judgment, proved, for example, by an affidavit of the judgment creditor. A writ is issued at the judgment creditor's risk. If the debtor disputes liability for the amounts reflected therein, for example because he says he has paid them or because he has been released from his obligations or because he contends that he is not liable for them on the ground that they are not within the scope of the judgment, he can apply to the court for relief (at 587, quoted in Herbststein and Van Winsen *The Civil Practice of the High Courts and the Supreme Court of Appeal* in (5th ed. by Cilliers, Loots and Nel, 2009, at 1022).*

[5] As I have noted, the writ in the present instance was issued after the first respondent filed an affidavit (which does not appear to have been served on any of the other parties to the dispute) stating that he was entitled to the amount of R 208 744.92. The first respondent was fully aware at the time that the quantum of the settlement agreement was the subject of dispute. The writ was accordingly issued at the first respondent's risk.

[6] Insofar as the parties have sought to require this court to interpret their settlement agreement, I am not persuaded that the court has the jurisdiction to do so. Although this court is empowered in terms of section 158(1)(c) to make a settlement agreement an order of court, it does not necessarily follow that the court has the jurisdiction to determine a dispute about the terms or interpretation of that agreement. There is nothing in s 157 which directly or indirectly confers that jurisdiction on the court. The authority referred to in support of the proposition that the court is entitled to deal with the interpretation of settlement agreements, (*Mathosi & others v Kintetsu World Express (Pty) Ltd & another* (2008) 29 ILJ 2785 (LC)) is limited to a statement that the court will not make a settlement agreement an order of court unless the applicant persuades the court that the respondent has not complied with the terms of the agreement.

[7] The writ of execution was issued on the basis of a settlement agreement that had been made an arbitration award. The settlement agreement was not made an order of this court in terms of s 158(1)(c). Had it been, I could appreciate the scope of an argument to the effect that this court, having issued an order, might be called on to interpret the terms of the settlement agreement in giving effect to that order. What is before this court is ultimately an application to stay a writ in circumstances where the applicant contests the first respondent's quantification of the award. It seems to me that this is a matter to be dealt with by the bargaining council, or as a contractual dispute, and that it remains for the parties to refer their dispute about the interpretation of the settlement agreement to an appropriate forum for determination.

For these reasons, I make the following order:

1. The writ of execution issued by the third respondent on 20 May 2010 under case number GPBC436/2009 is set aside
2. There is no order as to costs.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

Date of application 11 November 2010

Date of judgment 16 February 2011