

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

Reportable

CASE NO: JR 698/02

In the matter between:

MAGENGENENE MBALEKI FRANS

Applicant

And

PPC CEMENT (PTY) LTD

First Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

GRACE GAORONGWE SEBOTHOMA NO

Third Respondent

JUDGMENT

BHOOLA J:

Introduction

- [1] This is an application in which the applicant seeks the following relief:
- (i) that the first respondent's review application dated 10 May 2002 be dismissed;
 - (ii) that the arbitration award of the third respondent, dated 11 April 2002 be made an order of Court;
 - (iii) costs of suit be paid by the first respondent and all those who oppose the application; and

(iv) further or alternative relief.

The issue

[2] This matter has a long and unfortunate history. An arbitration award was issued in April 2002 reinstating the applicant following a referral of his unfair dismissal dispute to the second respondent in 2001. The first respondent filed a review application in terms of section 145 (1) of the Labour Relations Act 66 of 1995 ("the LRA") on 15 May 2002. The applicant has not opposed the review. The applicant tendered his services and was informed that the review was pending. The tape recording of the proceedings was incomplete and an attempt was made to reconstruct portions of the initial record. Deliberations followed between the parties and it would appear that the applicant took a rather obstructive approach to the reconstruction process, as appears from the opposing affidavit in this application, to which the applicant has not filed a replying affidavit.

[3] The application to make the award an order of court has been brought eight years after the award was made. The third respondent pleads that the award has prescribed since the extinctive prescription rules as provided for in the Prescription Act 68 of 1969 are applicable.

Submissions

[4] The primary submission of Mr Mphephya, on behalf of the applicant was that the Prescription Act is not applicable on account of the general equitable jurisdiction exercised by this Court as set out in section 151 (1) of "the LRA". The invoking of the Prescription Act in these circumstances would result in denying a constitutional right to the applicant and all others similar to him on

account of their illiterate and indigent status. The applicant moreover did not simply sit back but sought legal assistance from a para-legal advice office and a radio station in order to enforce the award, and when he finally obtained assistance (from his brother, who has some legal training) he is met with a technical legal point. Whilst conceding the application of the Prescription Act to proceedings in terms of “the LRA”, Mr Mphephya urged this Court to find that prescription was interrupted by the review and to grant the relief sought by the applicant.

- [5] Mr Watt-Pringle SC, appearing for the first respondent, submitted that despite his sympathy for the applicant’s plight, this Court was required to apply the law. It is trite that extinctive prescription as envisaged in the Prescription Act is applicable to LRA disputes. In this regard an arbitration award is a debt as contemplated in the Prescription Act : *Chemical Energy Paper Printing Wood and Allied Workers Union & another v Le-Sel Research (Pty) Ltd* (2009) 30 ILJ 1818 (LC); *Public Servants Association obo Khaya v CCMA & others* (2008) 29 ILJ 1546 (LC). With certain exceptions, a debt prescribes after a three-year period as provided for in section 11 (d) of the Prescription Act: *Mampuru & others v Maxi Strategic Alliance (Pty) Ltd* [2009] 8 BLLR 762 (LC). In *POPCRU on behalf of Sifuba v Commissioner of the SA Police Service & others* (2009) 30 ILJ 1309 (LC), the Court held that a counter-application to make an award an order of court will interrupt prescription, but seeking this relief in an answering affidavit in the review was insufficient. Furthermore, in *National Union of Metalworkers of South Africa & another v Espach Engineering* (2010) 31 ILJ 987 (LC), Molahlehi J held that once an award had been issued, an employee could enforce it either by way of section 143 or applying to make it an order of court under section 158(1) (c) of “the LRA”. Both of these are processes as envisaged in section 15 (6) of the Prescription Act, which would interrupt prescription but the filing of a review does not interrupt prescription as envisaged in section 15 (6) of the Prescription Act.

Conclusion

- [6] Molahlehi J, correctly in my view, confirmed the principle expressed in *Sifuba (supra)* that the expeditious resolution of labour disputes was consistent with the timeous enforcement of debts as set out in the Prescription Act. Accordingly, he held that a party's right to enforce an award by having it made an order of court prescribes three years after the issue of the award.
- [7] Lastly, in *Sifuba (supra)* Musi AJ dealt expressly with the equitable jurisdiction point and proceeded to debunk the notion that this Court exercises a jurisdictional discretion in regard to whether the Prescription Act is applicable or not. He held that it was a rule of practice, not of law, that a review application suspends the operation of an award. In these circumstances "the LRA" merely confers on the Labour Court a discretion to stay the enforcement of an award where circumstances so require and that a pending review application is not a bar to making an award an order of court. If these principles are to be applied to the present matter it would make it clear that a review is not a legal impediment that interrupts the running of prescription, and the applicant should have taken timeous steps to enforce the award.
- [8] Since this finding renders the award unenforceable and disposes of the review as well, it is unnecessary to consider the dismissal application. There is no doubt that the finding that the award has prescribed undoubtedly compounds the injustice the applicant feels, and that it is opportunistic of the first respondent, as was put to its Counsel during his submissions, to plead prescription after having delayed its review. However it is the only conclusion on the clear legal authority cited that can be made on the facts, and even the exercise of any equitable jurisdiction can sadly not resuscitate the applicant's claim.
- [9] In the premises, I make the following order:

The application to make the award an order of this court in terms of section 158(1) (c) is dismissed. There is no order as to costs.

Bhoola J

Judge of the Labour Court of South Africa

Date of hearing: 19 April 2011

Date of judgment: 29 April 2011

Appearance:

For the Applicant: Mr Mphepya, Legal Aid Board

For the First Respondent: Adv C E Watt-Pringle SC instructed by Fluxmans