



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: J 372/2014

In the matter between:

Not Reportable

MISABENI KHOSA & ASSOCIATES

Applicant

and

SIYABULELA MAKUNGA

First Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Second Respondent

COMMISSIONER NELSON LEDWABA

Third Respondent

SHERIFF HALFWAYHOUSE-ALEXANDRA

Fourth Respondent

Heard: 25 February 2014

Order: 25 February 2014

Date edited: 09 May 2014

Summary: Arbitration award unsuccessfully reviewed by this Court on previous occasion. The Labour Court does not have jurisdiction to stay the award pending a referral of a rescission application of the same award to the Commission for Conciliation, Mediation and arbitration. Urgent application dismissed with costs on an attorney client scale.

JUDGMENT

AC BASSON, J

- [1] This was an urgent application by the applicant (Misabeni Khosa & Associates) for an order staying the enforcement of an arbitration award by the third respondent dated 16 September 2011 pending a rescission application to be filed with the second respondent ("the CCMA").
- [2] The application was opposed. The respondent also raised two points *in limine*. I have decided that the first *point in limine* to be dispositive of the matter. Before I turn briefly to the first point *in limine* raised by the first respondent (Mr Makunga) it is necessary to briefly refer to the history of this matter.
- [3] The respondent (Mr Kakhunga) resigned from his employment with the applicant on 1 July 2011. He referred a dispute relating to his unfair dismissal to the CCMA. The CCMA conciliation proceedings were not attended by the applicant. Although the applicant's representative did attend the arbitration set down for 5 September 2011, he walked out of the proceedings after the applicant's application for a postponement was unsuccessful. The arbitration thereafter proceeded in the absence of the applicant and an arbitration award was issued in favour of the respondent on 16 September 2011.
- [4] The applicant subsequently filed a review application to the Labour Court seeking, amongst others, an order reviewing and setting aside the arbitration award rendered by the Commissioner. The review was heard by my learned brother Van Niekerk, J on 28 November 2013 and a judgment was handed down in favour of the respondent. The applicant was represented by Mr Goldberg when the judgment was delivered on this day. In terms of the order of this Court the review was dismissed with costs and the applicant was ordered to pay the respondent a sum of R 442 000.00 together with costs of the proceedings.
- [5] A warrant of execution was obtained on 23 January 2014 in respect of the capital amount. The applicant's bank account was attached as well as certain property.

- [6] The applicant then served a rescission application on the respondent on 14 February 2013 in which it sought to rescind and set aside the same arbitration award which the applicant unsuccessfully attempted to review and set aside in the Labour Court. The rescission application was also accompanied by a condonation application as the application is some two and a half years late.
- [7] Apart from the fact that the rescission application has no merits in light of the fact that it is clear that the applicant is in wilful default as the applicant has conceded in its papers that it had knowledge of the award since September 2011, this Court has already adjudicated on this award: The review was dismissed and the award was corrected.
- [8] In light of the foregoing, the first point *in limine* is upheld and the application is dismissed. I have decided to award costs on a punitive scale in light of the fact that this application is ill-founded and constitutes an abuse of court processes.

Order:

- [9] I therefore make the following order:

9.1 The application is dismissed with costs on an attorney client scale.

AC BASSON, J

Judge of the Labour Court

Appearances

For the applicant : Mr Matime of Nkomo Attorneys

For the first respondent : Mr Mathaphuna of DMS Attorneys

LABOUR COURT

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