



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: J 254/15

In The Matter Between:

ROYAL BAFOKENG PLATINUM MINE LIMITED

Applicant

And

PAUL VAN WYK

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

Heard: 17 February 2015

Delivered: 20 February 2015

JUDGMENT

LALLIE J

- [1] The applicant approached this court on an urgent basis for an order to stay the arbitration under case number NWRB 1299 – 14, set down by the second respondent for hearing on 9, 10, and 11 March 2015, pending finalisation of the application under part B of this application. In part B the applicant mainly seeks an order declaring the arbitration award involving both parties under

case number NWRB 1299 – 14 is to commence *de novo* as agreed between the parties. The application is opposed by the first respondent.

- [2] The facts of this matter are briefly that pursuant to his dismissal by the applicant, the first respondent referred an unfair dismissal dispute to the Commission for Conciliation Mediation and Arbitration (the CCMA), Second Respondent. It was arbitrated by Commissioner Tsatsimpe (the Commissioner). After a number of witnesses had testified, the applicant requested the Commissioner to recuse herself owing to her omission to make a disclosure. She refused. On 17 November 2014 she issued a ruling rescinding her *ex tempore* recusal ruling in which she refused to recuse herself. She directed that the arbitration be rescheduled and to be dealt with by another commissioner. The applicant and the first respondent agreed that the arbitration be referred for a hearing *de novo* before a different commissioner. It is the stay of the hearing of that *de novo* arbitration that forms the subject matter of this application. The applicant and the first respondent hold different views of the status of the initial arbitration. The former perceives it to be a nullity and holds the view that the record cannot be utilised in the pending arbitration while the latter intends relying on the record of the proceedings. In part B the applicant seeks, *inter alia* an order declaring the initial arbitration proceedings a nullity and setting them aside. The applicant seeks, on an urgent basis, an order staying the pending arbitration. The respondent opposes this application mainly on the grounds that it premature and not urgent as the purported urgency is self-created. The applicant has not met the requirements for urgent relief as its factual basis for the relief it is seeking is fatally flawed.

- [3] I find the following dictum in *Gois t/a Shakespeare's Pub v Van Zyl and other*¹ with the necessary changes apposite:

"The general principles for the granting of a stay in execution may therefore be summarised as follows:

- (a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.

¹ 2011 (1) SA 148 CLC at 155 H to 156 B

- (b) The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.
- (c) The court must be satisfied that:
 - (i) The applicant has a well grounded apprehension that the execution is taking place at the instance of the respondent (s); and
 - (ii) irreparable harm will result in execution is not stayed into the applicant ultimately succeeds in establishing a clear right.
- (d) Irreparable harm will invariably result if there is a possibility that the underlying *causa* is the subject matter of an ongoing dispute between the parties.
- (e) The court is not concerned with the merits of the underlying dispute- the sole enquiry is simply whether the *causa* is in dispute”.

[4] The general rule which is subject to the court's discretion is that the court has to look at all the circumstances and the merits of each case. It would appear that the first respondent recognises the need to have the pending arbitration stayed. He however, argued that the applicant could have applied for a postponement at the CCMA. His argument loses sight of the reality that the applicant is not just seeking a postponement, he is seeking an order to stay the arbitration proceedings *pendente lite*, an order which falls outside the jurisdiction of the CCMA. The first respondent's argument that the applicant has an alternative remedy has no merit. The existence of an underlying *causa* which is the subject matter of an ongoing dispute between the applicant and the first respondent is common cause. The merits of such *causa* are not before me but constitute the subject matter of part B. Contrary to the first respondent's argument, this application has not been brought prematurely. The applicant acted prudently in not waiting for the arbitration date but approach this court on the basis of urgency. The applicant's attempts to have the dispute resolved between the parties before approaching this court did not render this matter less urgent. They also do not render the urgency self-created. The circumstances of this matter require that I exercise the discretion in favour of the applicant. The applicant is not seeking a costs order against the first respondent.

[5] In the premises the following order is made:

5.1 The arbitration proceedings set down for 9,10 and 11 March 2015 by the second respondent under case number NWRB 1299-14 are stayed pending finalisation of the application and part B.

5.2 There is no order as to costs.

Lallie J

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Advocate Seleka

Instructed by: Webber Wentzel Attorneys

For the first respondent: Advocate Loyson

Instructed by: LB Attorneys Incorporated

LABOUR COURT