



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J580/2013

EDWIN NCHABELENG & 2 OTHERS

Applicants

and

LAPACE CONSTRUCTION (PTY) LTD

Respondent

Heard: 26 February 2015

Delivered: 5 March 2015

JUDGMENT

TLHOTLHALEMAJE, AJ

Introduction:

- [1] This is an opposed application brought in terms of section 158 (1) (c) of the Labour Relations Act 66 of 1995 as amended (The LRA). The applicants seek an order that the arbitration award under case number GATW696-13 dated 18 March 2013 be made an order of court.

Background:

- [2] The facts of this case are fairly common cause. The applicants had referred a dispute to the Commission for Conciliation, Mediation and Arbitration following the termination of their contracts by the respondent on 11 January 2013. The

parties resolved the dispute under the auspices of the CCMA, resulting in a settlement agreement dated 21 February 2013. The relevant terms of the settlement agreement are as follows;

- a) *The respondent agreed to re-employ the applicants with effect from 25 February 2013.*
- b) *The applicants were to report for duty on 25 February 2013 at 07h00 at "Eskom Site".*
- c) *The re-employment will be on the same terms and conditions of employment which governed the employment relationship prior to the dismissal unless specifically set in the agreement.*
- d) *The workplace will change to a new site at Eskom.*

- [3] On 18 March 2013, a Senior Commissioner of the CCMA had in terms of section 142A (1) of the LRA made the settlement agreement an arbitration award. There is a dispute as to whether there was compliance with the terms and conditions of the settlement agreement or not. However, as Ms. Van Vuuren on behalf of the first applicant had indicated, the issue of compliance is not before the court for determination, as the applicants only seek an order that the award be made an order of court.

The arguments and evaluation:

- [4] In its answering affidavit, the respondent raised a preliminary point to the effect that the order sought could not be granted as the applicants' application was defective to the extent that a copy of the settlement agreement was not attached to the founding affidavit. This omission was addressed by the first applicant in his replying affidavit as attributable to a *bona fide* oversight.
- [5] Despite raising this issue in the answering affidavit, no reference was made to it in the respondent's heads of argument. The settlement agreement or the subsequent award was not placed in dispute by the respondent. I am therefore satisfied that the defect was properly corrected in the replying affidavit by the subsequent attachment of a copy to that affidavit. There is therefore no merit in the respondent's preliminary point.

- [6] The respondent further opposed the application on the basis that even though the court has a judicial discretion to grant the order, such discretion should only be exercised in favour of the applicants if there is sufficient evidence of non-compliance with the settlement agreement by the respondent. Reliance in this regard was placed on *Mathosi & others v Kintetsu World Express (Pty) Ltd & another*¹.
- [7] This Court may make any arbitration award or settlement agreement an order of Court in terms of Section 158 (1) (c) of the LRA. The Labour Appeal Court in *Greef v Consol Glass (Pty) Ltd*² in dealing with applications to make settlement agreements an order of court reiterated that whether an order in terms of section 158 (1) (c) of the LRA will be granted or not is at the discretion of the court, which discretion must be exercised in a judicial manner, taking into account all the relevant facts and circumstances.
- [8] Section 158 (1) (c) provides a mechanism through which a successful party may enforce any award in the same manner as a judgment or order of Court. It provides a mechanism through which the execution of the award may be enforced and expedited. Without this enforcement mechanism, any settlement agreement or award issued by the CCMA would not be worth the paper it is written on.
- [9] It is further trite that the purpose of making an award an order of the Labour Court is to compel its enforcement, or enable its execution and not for some other purpose³. In considering whether to make an arbitration award an order of Court, and in further exercising its discretion, the court should ascertain whether there is either a real ground for doubting the validity of the award or the award is not in a form in which it can be enforced as a judgment.⁴

¹ (2008) 29 ILJ 2785 (LC) at para 9 - 13

² (2013) 34 ILJ 2385 (LAC) at para 19. See also *South African Post Office Ltd v CWU obo Permanent Part-Time Employees* (2014) 35 ILJ 455 (LAC) where the LAC, per Wagley JP held at para 21 that; “Section 158(1)(c) of the LRA provides that the Labour Court has the jurisdiction to make any settlement agreement, concluded in respect of a matter arising within the scope of the LRA, an order of court. This does not mean that the order is there for the taking. The Labour Court has a discretion to make it an order of court even if it otherwise meets the criteria provided in section 158(1A), read with section 158(1)(c) of the LRA”

³ SAPO at para 22

⁴ See *Mzulwini v Fidelity Cleaning* 2000 (21) ILJ 1382 (LC), and as also referred to in *T L Sejake v Naledi Local Municipality* (2014) 35 ILJ 500 (LC) at para 7

[10] In *Mathosi* as relied upon by the respondent, this court held that it would be superfluous for the court to make an arbitration award or a settlement agreement an order of this court when it cannot be executed and no evidence exist that a party has refused to comply⁵.

[11] The Labour Appeal Court in *South African Post Office Limited*⁶ also held that the Labour Court will grant an order sought in terms of Section 158(1)(c) of the LRA if at the very least satisfied that:

- (a) *the agreement, is one which meets the criteria set in s 158 (1)(c) read with section 158(1A) of the LRA, and if it is an award, that it satisfies the criteria set in section 142A of the LRA;*
- (b) *that the agreement or award is sufficiently clear to have enabled the defaulting party to know exactly what it is required to do in order to comply with the agreement or award; and,*
- (c) *There has not been compliance by the defaulting party with the terms of the agreement or the award.*

[12] In this case, I did not understand the respondent's contentions to be that there was anything in particular that made the award not to be in compliance with the criteria set out in section 142A of the LRA. I further did not understand the respondent's case to be that the award was not sufficiently clear for the purposes of compliance. More significantly, I did not understand the respondent's case to be that the arbitration award could not be executed for some reason, and in this regard, the conclusion reached by the court in *Mathosi* should be read in context.

[13] The only issue raised in opposing the application was that there was no proof that the respondent had not complied with the award. As already indicated, whether there was compliance or not is an issue in dispute. However, the

⁵ At para 12

⁶ At para 21

resolution of that dispute is a matter which it was contended on behalf of the applicant was not for the court to determine for the purposes of this application.

[14] Having taken the above factors into account, and since the applicants seek that the award should be made an order of court to enable them to execute it, is my view that it would not satisfy the demands of law and fairness⁷, to simply dismiss the application on the grounds of disputed facts as to whether there was compliance or not, especially where the court has not been asked to determine those disputed facts.

[15] I am satisfied that the award which the applicants seek to make an order of court complies with the provisions of section 142A (1) of the LRA, and as far as the respondent is concerned, its obligations in respect of that award are not in dispute nor unclear. It would therefore be equitable to exercise a discretion in favour of the applicants.

Order:

- (i) The arbitration award dated 18 March 2013 under case number GATW696-13 is made an order of court.
- (ii) There is no order as to costs.



Tlhotlhemaje, AJ

Acting Judge of the Labour Court of South Africa

⁷ See SAPO at para 22

APPEARANCES:

On behalf of the 1st Applicant: Ms. Yolandi van Vuuren of Jarvis Jacobs
Raubenheimer Inc

On behalf of 2nd and 3rd Applicants: Self represented

On behalf of the Respondent: Mr. RCJ Orton of Snyman Attorneys

LABOUR COURT