



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case NO: P 83/11

In the matter between:

MPUMELELO NOSILELA

Applicant

And

TRANSPORT AND ALLIED WORKERS

UNION OF SOUTH AFRICA

First Respondent

Heard: 31 July 2014

Delivered: 06 March 2015

Summary: An applicant seeking payment of remuneration he would have earned had he or not been prevented by the respondent from resuming his duties in terms of an arbitration award which ordered his reinstatement, may not move an application for an order that a writ of execution be issued for payment of the remuneration.

JUDGMENT

LALLIE J

- [1] The applicant seeks an order directing the registrar to issue a writ of execution in the amount of R223 431.72 as the amount due to the applicant from 22 July 2010, the date of his reinstatement in terms of an arbitration award to 7 May 2013, the date of his actual reinstatement, with interest at the legal rate as at 31 December 2013, and such further interest as maybe due by the respondent to the applicant and costs or such other amount or terms as the court may determine. The application is opposed by the respondent.
- [2] The background to this application is that the applicant was employed by the respondent as a regional organiser. He was dismissed on 18 January 2010 and referred an unfair dismissal dispute to the Commission for Conciliation Mediation and Arbitration (the CCMA). The CCMA found his dismissal substantively and procedurally unfair and ordered the respondent to reinstate him and pay him an amount of R25 000.00. The applicant was ordered to report for duty on 22 July 2010 but the respondent precluded him from resuming his duties and alleged that it intended having the arbitration award rescinded. The application for rescission was never launched and the applicant enforced the award resulting in the register issuing a writ of execution against the respondent for the payment of the R25 000.00 due to the applicant in terms of the award. The respondent eventually paid the applicant the amount of R25 000.00. In this application the applicant seeks an order directing the register to issue a writ of execution for the respondent to pay the applicant an amount of R223 431.72 which is equivalent to remuneration he would have earned had the respondent allowed him to resume his duties on 22 July 2010 and 7 May 2013 the date on which he was actually reinstated.
- [3] The respondent opposed this application on the basis that a writ of execution can only be issued if its purpose is to enforce a judgement that has been obtained by a judgement creditor. In this regard it relied on *Ras en Andere v Sand River Citrus Estate (Pty) 1972 (4) SA T 504*. It was further argued that no judgement exists in favour of the applicant which requires the respondent to pay the amount of R223 431.72. The cause of action which the applicant relies on is different from the one which forms the basis of the arbitration

award. I have considered the arguments on behalf of the applicant as well as the authority he referred to. He disclosed no legal basis for the order that he is seeking. I could find no legislation which enables the Labour Court to grant the relief sought by the applicant. Enforcement of arbitration awards is governed by the Labour Relations Act 66 of 1995 (the LRA). It excludes the relief the applicant is seeking. His application can therefore not succeed.

[4] I have considered the arguments on behalf of the parties on the question of costs as well as the provisions of section 162 of the LRA. The applicant is an individual who approached this court in an endeavour to enforce his rights in terms of an arbitration award. I am not convinced that considerations of both the law and fairness justify the granting of a costs order in the circumstances.

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

5.1 The application is dismissed.

Lallie J

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Memani

Instructed by: Lennon Molele & Partners

For the Third Respondent: Mr Unwin of Chris Unwin Attorneys

LABOUR COURT