



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**  
**JUDGMENT**

Not Reportable

Case no: JR2422/14

**COLONEL MOSEDI JONAS LEKHOENEHA**

**Applicant**

and

**MINISTER OF POLICE**

**Respondent**

**Heard: 6 January 2016**

**Delivered: 8 January 2016**

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**JUDGMENT**

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N FOURIE, AJ

- [1] This is an application to make an arbitration award issued on 14 July 2014 an order of court in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 (*“the LRA”*). The respondent opposes the application, and has brought a counter-application to stay the enforcement of the award under section 145(3) of the LRA, pending the outcome of a review application brought under case number JR 1765/2014 to set aside that award.
- [2] In the course of the hearing, it was brought to my attention that the applicant has in case number JR 1765/2014 also brought a Rule 11 application in which, among other things apparently, the applicant also seeks to make the same arbitration award that is the subject of the review an order of court.

- [3] Pending the review, the applicant has accordingly brought two applications under two case numbers to attempt to enforce the award, and the respondent has twice brought an application to stay enforcement – first in the form of an urgent application which it then did not pursue due to non-compliance of that application with the rules of court, and then in the form of the counter-application that is the subject of this hearing.
- [4] I was further informed that in case number JR 1765/2014 the Honourable Justice Molahlehi had, in response to a request for a directive, instructed that the parties enrol the rule 11 application together with the review application under case number JR 1765/2014 in order to avoid the piecemeal determination of the matter.
- [5] It appears to me, following the same logic, that this application and counter-application ought to be consolidated with the applications pending under case number JR 1765/2014 in order to allow the determination of all four applications in one hearing.
- [6] The respondent's representative had initiated attempts to agree to the postponement of this hearing in order to achieve just such a consolidation, but no agreement could be reached with the applicant's representative.
- [7] The applicant's counsel explained that this refusal and the decision nevertheless to argue this application and counter-application upfront had been informed by two considerations. First, he said that the applicant was concerned that the review was being delayed. However, the applicant presented no evidence in this application regarding such a delay. I am told that facts regarding progress made in the prosecution of the review appear from the applications filed in matter JR 1765/2014. This too suggests that a consolidation of the two cases would have been the preferable approach.
- [8] Second, he explained, the application to enforce the award could not be postponed or consolidated with the review because of the risk that the arbitration award would in the meantime prescribe. The Prescription Act 68 of 1969 applies to awards issued before 1 January 2015 when the Labour Relations Amendment Act 6 of 2014 came into effect. The Amendment Act

introduced section 145(9) which provides that an application to review an award under section 145 interrupts the running of prescription in terms of the Prescription Act in respect of that award. Section 145(10), however, provides that section 145(9) applies only to arbitration awards made after 1 January 2015.

- [9] The fear of prescription, however, was not justified in light of the decision of the Labour Appeal Court in *Myathaza v Johannesburg Metropolitan Bus Service (Soc) Limited t/a Metrobus; Mazibuko v Concor Plant; Cellucity (Pty) Ltd v CWU obo Peters* (JA122/14) [2015] ZALAC 45 (6 November 2015). The LAC in that matter confirmed that, whereas an application to review does not interrupt the running of prescription (unless section 145(9) applies), a section 158(1)(c) application to enforce an award does interrupt prescription of that award. The LAC also emphasised at paragraph 27 that it is not the granting of the order in such an application that will trigger the interruption of prescription, but the service of the application, assuming of course that the application is ultimately successful.
- [10] In the present case, the application to enforce will, if ultimately successful, interrupt prescription with effect from the date of its service. If the application to enforce were to be unsuccessful, prescription will not have been interrupted and prescription will still be running. It seems to me preferable in these circumstances to decide the application for enforcement under section 158(1)(c) once the review is ready to be determined, and not before.
- [11] The respondent urged me to grant a costs order against the applicant due to his refusal to agree to the reasonable request for a postponement and consolidation with the pending review matter. The applicant's legal representative, on the other hand, urged me to consider the financial burden of the ongoing litigation on the applicant, which he submitted had been severe. I have some sympathy for the applicant's position as an individual litigating against the state. But his position may well have been exacerbated by his failure, or perhaps that of his legal representative, to agree to a sensible arrangement in order to consolidate and resolve the matter. These matters have, however, not been addressed in evidence before me.

Order:

[12] In the circumstances, I accordingly make the following order.

12.1 This matter is consolidated with the matter in JR 1765/2014.

12.2 In the event that either party fails to comply with the time periods in the rules for prosecuting the review application, the other party may approach the Judge President to appoint a judge to undertake the case management of the files, and to ensure an expeditious hearing.

12.3 Once the review is ripe for hearing, the Registrar is directed to enrol the consolidated matter as a matter of urgency.

12.4 Costs are reserved.

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N Fourie, AJ

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adv. J.P. Breytenbach

Instructed by: Lovius Block Attorneys

For the Respondent: Adv. P.R. Cronje

Instructed by: The State Attorney

LABOUR COURT