



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J631-17

In the matter between:

LAMBONS(PTY)LTD t/a LAMBONS PEUGOT(PTY)LTD

Applicant

and

MELISSA BARKER

First Respondent

COMMISSION OF DISPUTE RESOLUTION

CENTRE

Second Respondent

SHERIFF BLOEMFONTEIN EAST

Third Respondent

Heard: 19 April 2017

Delivered: 25 April 2017

JUDGMENT

WHITCHER J

Introduction

- [1] The applicant seeks an order on an urgent basis that the third respondent and the Sheriff be interdicted from enforcing / executing the arbitration award issued by Commissioner M Terblanche dated 7 November 2016, pending the finalisation of the application filed on 10 January 2017 for the review of the award.
- [2] In my view, it would be just and equitable to grant the application in light of the following.
- [3] Section 145(7) of the LRA provides that the institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the court in accordance with subsection (8).
- [4] I have perused the security bond provided and the fact that the relevant amount has been paid into the trust account of the applicant's attorney, and hold that the applicant has provided security to the satisfaction of the Court.
- [5] The rights of the CCMA or DRC or the Commissioner will not be affected by a judgment made in this matter since no relief is sought against these parties and the application is not directed at setting aside any act committed by these parties. The application is to stop the first respondent and sheriff from enforcing the arbitration award certified by the CCMA. In light hereof there was no need to join these parties to this application.

Urgency

- [6] This urgent application was filed 8 days after the sheriff attempted to execute the writ and after the applicant first attempted to resolve the issue with the first respondent's attorneys. The applicant thus acted as expeditiously as it could in bringing this application.

Defective Review Application

- [7] The review application was filed 20 days late, with no accompanying condonation application. I do not see why this application to stay should be

dismissed on account that the review was filed late since it is still open to the applicant to file a condonation application.

Order

- [8] The applicant's non-compliance with the ordinary forms, service and time periods provided for in the Rules of the Labour Court is condoned and the matter is dealt with as one of urgency.
- [9] The first respondent and the third respondent [Sheriff Bloemfontein East] is ordered not to execute and enforce the arbitration award issued by Commissioner M Terblanche dated 7 November 2016 and certified by the CCMA under case number MINT 50205 or proceed with a sale in execution in respect of the award pending the outcome of the review application filed by the applicant.
- [10] There is no order as to costs.

Whitcher J

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: TC Hitge Incorporated

For the First Respondent: Gerrie Ebersohn Attorneys