



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J864-17

In the matter between:

EDNA KELEBOGILE NGAKE

Applicant

and

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

First Respondent

TM GRAHAM N.O.

Second Respondent

RUSTENBURG LOCAL MUNICIPALITY

Third Respondent

SHERIFF OF RUSTENBURG

Fourth Respondent

Heard: 20 April 2017

Delivered: 25 April 2017

JUDGMENT

WHITCHER J

Introduction

- [1] On 11 November 2016, the applicant launched a review application to set aside an arbitration award issued on 24 October 2016 which ordered the reinstatement with back pay of the third respondent.
- [2] On 3 April 2017, the applicant launched an urgent application under J779-17 to stay the writ of execution dated 7 March 2017 pending the finalisation of the review application. On 7 April 2017, Steenkamp J struck the application from the roll for lack of urgency. The applicant was criticised for not treating the matter urgently and approaching the court earlier.
- [3] The applicant thereafter, on 7 April 2017, wrote to the third respondent's attorney advising them that they have "now issued an application to stay the award and writ in the normal course", and in this regard, they urge the third respondent to give an undertaking to place the execution in abeyance until the application to stay was determined by the Court on the normal roll. They further advised that if the undertaking was not forthcoming by the close of business on 10 April, the applicant shall proceed to approach the Court on an urgent basis *again*, to stay the writ and award.
- [4] On 10 April 2017, the third respondent, through her attorney, refused to grant the undertaking sought. Her attorneys warned the applicant that any fresh urgent application was irregular because it would be based on the same subject matter, relief and facts as in the urgent application that was struck from the roll on 7 April 2017 under case number J779-17.
- [5] On 11 April 2017, the applicant launched this urgent application to stay the writ of execution dated 7 March 2017 pending the finalisation of the applicant's application to stay the writ and award under case number J779-17.
- [6] The applicant submits that other intervening facts now exist which renders *this matter* urgent, namely that the third respondent has failed to give the undertaking mentioned above.

- [7] In my view this new factor is nothing more than an attempt to self-create urgency. In my view the circumstances under which the original application was dismissed have not changed, namely that the applicant failed to act timeously and with appropriate urgency to bring their applications to stay the execution of the writ and award. This application is nothing more than a repeat of the original application and on this basis needs to be dismissed and not just struck off the roll. Obviously the original application under J779-17i s still alive and pending.
- [8] I also note that the applicant, despite claiming same, did not take steps for the stuck off application to be filed and set down in the ordinary course and roll.
- [9] The applicant had from 11 November 2016 to launch an application to stay the execution of the award. They ought to have anticipated that the third respondent in the absence of a stay to enforce would attempt to enforce the award as what ordinarily happens in hundreds of cases, and in November sought an undertaking, and failing which launch the application then. It is by now a well-known and simple practice for parties to launch a review application together with an application to stay the execution of the award.

Order

- [10] The application is dismissed with costs.

Whitcher J

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: X Mofokeng, instructed by Majang Attorneys

For Third Respondent: Adv T Tema, instructed by De Swardt Vogel Myambo

Labour Court