

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

CASE NO: J1383/2017

DATE: 2017-06-27

In the matter between

WOOLWORTHS (PTY) LTD

Applicant

and

CCMA

First respondent

Commissnioner RAFFEE

Second respondent

AKALANI GLADNESS MASINDI

Third respondent

5

EX TEMPORE JUDGMENT

STEENKAMP, J:

10 This is an application for *rule nisi* calling upon the
respondents to show cause on the return date why an order
should not be made in the following terms:

Firstly, to stay the enforcement of an arbitration award
pending the outcome of a review application;

15 And secondly, that provision of security relating to the
review application is dispensed with, alternatively reducing the
provision of security to the amount of R10 000.

It is trite that the Court may stay the enforcement of an award in terms of s 145(3) of the Labour Relations Act 66 of 1995.

Mr *Pretorius* has referred to the LAC case of the *CCMA*
5 *v MBS Transport cc*, JA94/2015 delivered on 28 June 2016.

In that case, as far as it should have been necessary, the LAC reiterated in paragraph [41] that section 145 (3) is clear. The enforcement of an arbitration award may be stayed by the Labour Court, pending its decision in a review application.

10 The contentious part of this application is the relief sought in paragraph 2.2, namely that provision of security be dispensed with or reduced.

In terms of the amendments to the LRA, introduced by Act 6 of 2014 that commenced in 2015, as is apparent from section
15 145 (7), 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 sub-section (8), which reads:

“Unless the Labour Court directs
20 otherwise, the security furnished as contemplated in subsection (7) must --

(a) in the case of an order for reinstatement or re-employment,
be equivalent to 24 months’
25 remuneration; or

(b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.”

5 In this case the amount of compensation awarded is R 107 189, 04. The applicant, Woolworths (Pty) Ltd, is one of the most financially healthy corporate entities in this country. It has provided the Court with its interim results, showing an operating profit of millions of Rands. There is no doubt that it is in a
10 position to furnish the security as contemplated by the Act.

Despite that, Mr *Pretorius* – for Woolworths – argued that it should be exempt from paying security as the applicant would suffer financial prejudice. Furnishing security would, it says, “hamper the utilisation of funds.”

15 That is of course true for any employer, not just for a large corporate employer like Woolworths. There are many smaller employers that may well be hamstrung to a much greater degree, and it is for that reason that sub-section (8) allows the Court to “direct otherwise”, i.e. in exceptional circumstances to
20 direct that a smaller amount be furnished. This is not such a case.

The aim of the legislation is clear. It is to safeguard the rights of the employee, so that, should the review application be unsuccessful, the payment of the compensation is guaranteed,
25 and the employee is not put in a position where she again has to

take further steps and incur further costs in order to ensure that the amount due to her is paid. To put it colloquially, she should not be placed in a position where she has to “whistle for her money”.

5 I can see no reason why Woolworths should be exempt from that peremptory provision, inserted by the legislature in the Labour Relations Act. It is not for this court to second guess the legislature. If, as Mr *Pretorius* submitted, there is a case to be made that the provision is unconstitutional, then the proper
10 application should be brought to have it declared unconstitutional.

I am not persuaded that the relief sought in prayer 2 should be granted.

ORDER

I therefore grant an order in the following terms:

15 [1] A rule *nisi* is issued calling upon the respondents to show cause on the return day, being 20 September 2017, why an order should not be granted that the enforcement of the arbitration award under case reference GAJB 20792/16 dated 17th March 2017 is stayed pending the outcome of the review application.

20 [2] The applicant must provide security in terms of section 145 (8) of the LRA by 7 July 2018.

[3] Paragraph 1 serves as an interim order pending the return day.

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STEENKAMP J

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CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that as far as it is audible to me, the
aforegoing is a true and correct transcript of electronically recorded
proceedings in the matter of:

WOOLWORTHS

Applicant

and

TAKALANI GLADNESS MASINDI

Respondent

20

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COURT OF ORIGIN : Labour Court

CASE NUMBER : J1383/2017

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TRANSCRIBER'S NOTES:

A very bad recording. Sound and voice both extremely unclear, giving rise to [indistinct] remarks.

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