IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J1818/17

In the matter between:

MURORO DZIRUNI **Applicant**

and

SOUTH AFRICAN MARITIME SAFETY AUTHORITY ("SAMSA") **Respondent**

Heard: **16 August 2017**

Delivered: **31 August 2017**

JUDGMENT

TLHOTLHALEMAJE, J:

Introduction:

[1] The applicant approached the Court on urgent basis to seek an order in the following terms:

1. "…

2. Ordering and directing that the settlement agreement concluded between the Applicant and the Respondent on 2 August 2017 under the auspices of the Commission for Conciliation Mediation and Arbitration be and is hereby made an Order of Court in terms of

section 158(1)(c) of the Labour Relations Act, 1995 (Act No. 66 of 1995);

3. Ordering and directing the Respondent to permit and allow the Applicant to resume his duties and responsibilities as the Manager: Project Management of South African Maritime Safety Authority with immediate effect;

4. Ordering and directing the Respondent to pay to the Applicant all his lost salaries for months of April 2017, May 2017, June 2017 and July 2017 on or before 15 August 2017 as it was agreed in accordance with the terms of the settlement agreement reached between the parties."

[2] The respondent opposed this application. This matter initially came before me on 15 August 2017. In view of the congested urgent roll and the fact that the respondent's answering affidavit came to my attention belatedly, it was agreed between the parties that the matter would be heard the following day on 16 August 2017.

Background:

[3] The applicant commenced his employment with the respondent in terms of a three (3) years fixed term contract of employment with effect from 17 March 2014. He was appointed as Manager: Project Management. The respondent is a public owned entity established in terms of the provisions of section 2(1)[1] of the South African Maritime Safety Act.[2]

[4] The applicant's contract was terminated on 31 March 2017 upon its expiry. He thereafter referred a dispute referred to the Commission for Conciliation Mediation and Arbitration (CCMA), contending that he was dismissed within the meaning of the provisions of section 186(1)(b)(i)[3] of the Labour Relations

[1] Section 2: **Establishment and transfer of certain functions**. —

(1) The South African Maritime Safety Authority is hereby established as a juristic person.

(2) The administration of the laws mentioned in the first column of the Schedule is transferred to the Authority subject to the amendments (if any) contained in the third column of the Schedule, with effect from a date fixed by the Minister by notice in the Gazette which must not be a date before 1 April 1998.

[2] Act 5 of 1998

[3] Section 186: **Meaning of dismissal and unfair labour practice**:—

Act (LRA).[4] The respondent failed to attend the conciliation proceedings, and a certificate of outcome was issued. The applicant then referred the matter for arbitration, which was subsequently set down for 2 August 2017.

[5] It is common cause that before the arbitration proceedings could commence, the Commissioner asked the parties whether he could revert to conciliation, taking into account that the respondent had not attended the previous conciliation meeting. The parties acceded to that request and in that regard, the Commissioner in terms of the provisions of section 138(3)[5] of the LRA reverted to the conciliation process.

[6] The respondent at the CCMA proceedings was represented by its Executive Manager: Human Resources, Mr Pule Mashilwane (Mashilwane), who had indicated that he did not have the necessary mandate to enter into a settlement agreement at that time. The applicant avers that Mashilwane was then given an opportunity to contact the respondent in order to obtain the necessary mandate to enter into settlement discussions. According to the applicant, Mashilwane came back and indicated to the Commissioner that he had obtained the necessary mandate.

[7] Further discussions between the parties as facilitated by the Commissioner culminated in a signed settlement agreement, in terms of which the parties agreed that:

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(1) Dismissal means that –

(a) …………

(b) an employee employed in terms of a fixed term contract of employment reasonably expected the employer-

i. to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or

ii. …………

[4] Act 66 of 1995

[5] Section 138: **General provisions for arbitration proceedings: :—**

(1) The commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

(2) Subject to the discretion of the commissioner as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the commissioner.

(3) If all the parties consent, the commissioner may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation.

"…

1. *The applicant['s] contract of employment is extended for a year (31 March 2017 to 31 March 2017) on the same terms and condition[s] that prevailed before the termination;*

2. *The respondent will pay back-pay to the applicant from 31 March 2017 [u]till 31 July 2017 on or before 15 August 2017;*

3. *The applicant will report for duty on 7 August 2017 [on] the respondent's premises;*

4. *The period [from] 1 August 2017 [to] 6 August 2017 will be treated as vocational leave."*

[8] The applicant as per the settlement agreement reported for duty on 7 August 2017. He averred that upon his arrival, Mashilwane had instructed the respondent's security officers to remove him from its premises. This was despite the fact that the applicant's immediate superior had already addressed a letter to the Respondent's HR indicating that preparations should be made for his reinstatement. This application was then launched on 10 August 2017, having been served on the respondent on 7 August 2017.

[9] In bringing this application, the applicant contended that he sought specific performance in view of the terms and conditions of the settlement agreement. The basis for the urgency was that he was out of employment for over four months and would suffer financial prejudice if he were to obtain relief in the normal course. I will deal with the other requirements of the relief sought at a later stage to the extent that it is found that the matter is indeed urgent.

[10] The respondent, in an answering affidavit deposed to by its Chief Operating Officer, Sobantu Tilayi, opposed the application on the grounds that;

a) It was not urgent, particularly since financial inconvenience or hardship could not constitute a ground for urgency;

b) There was nothing urgent about the applicant's return to work, which was not only illegitimate, but since he had not been in the respondent's employ for about five months;

c) The relief that the applicant sought was not competent as an application for the rescission of the award was made in respect of the agreement concluded on 2 August 2017, as the "award" was erroneously sought and granted;

d) During the CCMA proceedings and prior to the conclusion of the settlement agreement, Mashilwane had raised concerns with the Commissioner in respect of his lack of mandate to enter into any agreement. Notwithstanding his reservations, Mashilwane made attempts to obtain the necessary mandate from Tilayi's office, but was however unsuccessful;

e) The Commissioner at the arbitration proceedings had 'instructed' the parties to enter into settlement discussions, and insisted on the matter being conciliated despite the fact that previous attempts at conciliation had failed;

f) The authority to institute and/or defend legal proceedings, and to enter into settlement agreements with any party in labour disputes rested with the CEO of the respondent, which function was delegated to Tilayi, and at no point did he or the office of the CEO sub-delegate the authority to settle the dispute to Mashilwane. The latter's actions were therefore *ultra vires*;

g) The terms of the settlement agreement are prejudicial to the respondent as the applicant's contract of employment had lapsed and was not to be renewed.

[11] In his replying affidavit, the applicant contended that the respondent's rescission application before the CCMA was ill-conceived as it was premised on an incorrect provision of the LRA, being section 144[6] and further that the

[6] Section 144: **Variation and rescission of arbitration awards and rulings**

subject matter of this application and that before the CCMA was not an arbitration award, but rather a settlement agreement. The provisions of section 144 read with Rule 32[7] of the Rules of CCMA did not therefore find application in the current matter.

[12] When this matter resumed on 16 August 2017, Mr Khoza for the respondent submitted that in view of the averments made in the replying affidavit, a proper application to review and set aside the conduct of Mashilwane in concluding the settlement agreement was accordingly filed and served.

Evaluation:

[13] It is trite that an applicant who approaches this Court on an urgent basis is obliged to make out a case for urgent relief in the founding affidavit with sufficient particularity as required by the provisions of Rule 8[8] of the Rules of this Court. The urgent application must further comply with the requirements set out in Rules 7(1); 7(2); 7(3) and where applicable, 7(7).

[14] Significant with Rule 8(2) is the requirement that the affidavit in support of the application (a), the reasons for urgency and why urgent relief is

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Any commissioner who has issued an arbitration award or ruling, or any other commissioner appointed by the director for that purpose, may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling-

(*a*) erroneously sought or erroneously made in the absence of any party affected by that award;

(*b*) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;

(*c*) granted as a result of a mistake common to the parties to the proceedings; or

(d) made in the absence of any party, on good cause shown.

[7] Rule 32: **How to apply to vary or rescind arbitration awards or rulings**

1) An application for the variation or rescission of an arbitration award or ruling must be made within fourteen days of the date on which the applicant became aware of-
   a) the arbitration award or ruling; or
   b) a mistake common to the parties to the proceedings.
2) A ruling made by a commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

[8] Rule 8: **Urgent relief**

(1) A party that applies for urgent relief must file an application that complies with the requirements of rules 7(1), 7(2), 7(3) and, if applicable, 7(7).

(2) The affidavit in support of the application must also contain-

(a) the reasons for urgency and why urgent relief is necessary;

(b) the reasons why the requirements of the rules were not complied with, if that is the case; and

(c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Act, the party must provide reasons why a shorter period of notice should be permitted.

necessary; (b) the reasons why the requirements of the rules were not complied with, if that is the case; and (c) if a party brings an application in a shorter period than that provided for in terms of section 68(2)[9] of the Act, the party must provide reasons why a shorter period of notice should be permitted.

[15] A further consideration in determining whether a matter is urgent is the haste with which an applicant approached the Court. In this case, I am satisfied that upon the applicant being refused permission to resume his duties in accordance with the terms and conditions of the settlement agreement, he did not waste any time in launching this application. The issue that remains to be determined is whether the reasons the applicant advanced for urgency are sufficient and persuasive.

[16] Central to the respondent's opposition to the application was that it was not urgent, particularly since financial inconvenience or hardship as claimed by the applicant cannot constitute a ground for urgency.The question whether financial inconvenience and hardship can ever be a basis for a matter to be treated as urgent has been answered by this and other courts on various occasions.

[17] This Court in *Democratic Nursing Organisation of SA and Another v Director-General, Department of Health and Others*[10] held that;

> '… as a general principle, financial hardship or loss of income cannot be regarded as grounds for urgent relief. For the applicant to succeed when relying on financial hardship or loss of income he or she must show the

[9] Section 68: **Strike or lock-out not in compliance with this Act**

(1)…

(2) The Labour Court may not grant any order in terms of subsection (1)(a) unless 48 hours' notice of the application has been given to the respondent: However, the Court may permit a shorter period of notice if -

(a) the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;

(b) the respondent has been given a reasonably opportunity to be head before a decision concerning that application is taken; and

(c) the applicant has shown good cause why a period shorter than 48 hours should be permitted.

…

[10] *(2009) 30 ILJ 1845 (LC)* at para 19.

existence of exceptional circumstances justifying the granting of an order on an urgent basis and on the ground of financial hardship.….'

[18] A similar approach was also adopted by this Court in *Harley v Bacarac Trading 39 (Pty) Ltd*[11], where it was held that;

> 'If an applicant is able to demonstrate detrimental consequences that may not be capable of being addressed in due course and if an applicant is able to demonstrate that he or she will suffer undue hardship if the court were to refuse to come to his or her assistance on an urgent basis, I fail to appreciate why this court should not be entitled to exercise a discretion and grant urgent relief in appropriate circumstances. Each case must of course be assessed on its own merits.'

[19] A not so dissimilar approach was also followed in *Ledimo and Others v Minister of Safety and Security and Another*[12]*,* where it was held that;

> 'In the three cases I have quoted above the courts have held that the mere fact that irreparable financial losses have been suffered or would be suffered by the applicant was not, by itself, sufficient ground to ground the requisite urgency necessary to justify a departure from the ordinary court rules. In applying this principle, a judge will do well to keep the words of wisdom which were expressed through the lips of Kroon J on p 15 in CALEDON STREET RESTAURANTS CC (supra). I find it apposite to echo those sentiments here by quoting him *verbatim*:
>
> ''However, the following comments fall to be made. First, to the extent that these cases may be interpreted as laying down that financial exigencies cannot be invoked to lay a basis for urgency, I consider that no general rule to that effect can be laid down. Much would depend on the nature of such exigencies and the extent to which they weigh up against other considerations such as the interests of the other party and its lawyers and any inconvenience occasioned to the court by having to entertain an application on an urgent basis. Second, whatever the extent of the

[11] *(2009) 30 ILJ 2085 (LC)* at para 8.

[12] *(2242/2003) [2003] ZAFSHC 16 (28 August 2003)* at para 32, in reference to Trustees, BKA Besigheidstrust v Eco Produkte en Dienste 1990(2) SA 102 (TPD) at 108D-E; Caledon Street Restaurants CC v Monica D'aviera [1998] JOL 1832 SE (Unreported)

> indulgence, the sanction of the court thereof that an application be heard as a matter of urgency, would not in general, in this Division, accord the matter precedence over other matters and result in the disposal of the latter being prejudiced by being delayed."

[20] Emanating from the above authorities, it can be accepted that there is no immutable principle that a Court cannot accord a matter urgency on the basis of financial hardship or loss of income. Thus, each case must be dealt with on its merits, and a determination should be made by the Court as to whether compelling or exceptional circumstances exist for it to intervene based on that ground.

[21] The issue in this case is whether the applicant has advanced exceptional or compelling circumstances in this case. It cannot be doubted that a loss of a job has the invariable consequences of causing hardship not only to the employee concerned but also to his or her immediate dependents, and in other cases, to his or her extended dependents.

[22] In this case, the applicant averred that he had been out of work for four months, had no income to support and sustain his family (including 14 years old triplets), is unable to meet his financial obligations, and that the financial prejudice he was placed under should it endure would be so severe as to render him and his family destitute.

[23] In considering the matter, guidance is also sought from an important *dictum* in *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others*[13], where the Constitutional Court stated that;

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[13] *2014 (6) BCLR 726 (CC)* at para [31]; See also at para [36] where the Constitutional Court held that:

> "We have already said much that shows that the application for interim relief was manifestly urgent. The City had evicted the applicants from their trading areas or stalls and refused to allow them back, even though they had been verified and re registered at the behest of the City. Although the City admittedly failed to follow the processes in the Businesses Act, it forcibly evicted the applicant traders. Its conduct spawned immediate and acute hardship that left the applicant traders destitute. It was never disputed that they were unable to feed or house themselves or their families. The situation would have only worsened if it persisted".

> “…..The ability of people to earn money and support themselves and their families is an important component of the right to human dignity. Without it they faced “humiliation and degradation…..”

[24] It is acknowledged that it is not common in this court for section 158 (1) (c)[14] of the LRA applications to be brought on an urgent basis, and to be dealt as such. The reasoning behind this acknowledgement is that multitudes of cases get settled either at the CCMA or Bargaining Councils daily, and it is not uncommon for parties not to meet their end of the settlement agreement. To therefore allow each of these cases to be treated as urgent without consideration of other factors will invariably open the floodgates to the Court’s urgent roll. This will clearly be untenable for the Court.

[25] It however needs to be emphasised that not every case brought in terms of section 158 (1) (c) of the LRA will meet the requirement of exceptional circumstances. In regards to the facts and circumstances of this case, I am of the view that exceptional circumstances exists, necessitating the Court’s urgent intervention. My conclusions in this regard are fortified by the following considerations;

25.1 Following upon what the applicant deemed to be an unfair dismissal, he had exercised his rights to refer the dispute to the CCMA, with the expectation that the dispute would expeditiously be resolved.

25.2 When the dispute came before the Commissioner for determination, and as further averred by the applicant, he was ready to proceed with the matter having engaged the services of counsel.

25.3 An agreement to enter into settlement discussions is voluntary, and it is highly implausible that a Commissioner would ‘instruct’ or ‘force’ parties to enter into settlement discussions, let alone coerce them into signing a settlement agreement. A

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Commissioner's role, to the extent that at arbitration proceedings the provisions of section 138(3) of the LRA are invoked, can only be to facilitate a settlement of the dispute, without dictating to the parties how they should settle. In this case therefore, there can be no merit, at least on a *prima facie* basis, to conclude that Mashilwane, given his senior position could have been coerced into settling the dispute.

25.4 As a result of the settlement agreement, there can be no doubt that the applicant's expectation was that the respondent would comply with its terms and conditions. That expectation was even more justifiable in circumstances where the respondent had not raised any objections between the date that the agreement was entered into, and the date when the applicant reported back for duty. The effect of the respondent's failure to abide by the terms and conditions of the settlement agreement was clearly to adversely prejudice the applicant, and to prolong his financial hardship, in circumstances which were not of his own making.

25.5 The consequences of concluding a settlement agreement at the CCMA or the Bargaining Council is that the dispute is for all intents and purposes deemed to be resolved and thus finalised. The applicant in the face of the respondent's refusal to comply with the terms and conditions of the agreement is essentially left with no alternative remedy, as he cannot go back to the CCMA to have the matter arbitrated, until at least, such time that the respondent was successful in setting aside that agreement.

25.6 To the extent that the respondent now sought to be extricated from the agreement in the light of the applicant's expectations as indicated above, the latter was equally deprived of an opportunity to have his dispute fully ventilated and finally resolved at the arbitration proceedings as set down on

2 August 2017. The implications thereof are that the applicant will now have to wait for the final determination of a review application as launched by the respondent, and it cannot be doubted that the wait will indeed be a long one.

25.7 It further needs to be borne in mind that the applicant seeks specific performance, on his understanding and firm belief that the dispute between the parties was resolved. In *Ngubeni v The National Youth Development Agency and Another*[15], it was held that;

> "In *Santos Professional Football Club (Pty) Ltd v Igesund & another* 2003 (5) SA 73 (C), the court noted that courts in general should be 'slow and cautious' in not enforcing contracts, and that performance should be refused only where a recognised hardship to the defaulting party is proved."

25.8 In this case, the basis for opposing the granting of specific performance was that the applicant's contract of employment had expired; that he had no basis for a reasonable expectation of a renewal; and further that the settlement agreement had no binding effect as it was concluded by an individual without the necessary authority or mandate. It was further argued on behalf of the respondent that it would suffer prejudice as it had restructured its operations; did not require the services of the applicant any longer, and that since the rescission application was filed, the relief sought could not be granted.

25.9 It is my view that the grounds upon which the application is opposed cannot qualify as 'recognised hardship' in view of the fact that the applicant was entitled to exercise his rights to refer a dispute with an expectation that same would be expeditiously resolved. Another consideration is that the filing of a rescission application before the CCMA and the subsequent filing of a

[15] *(J 2322/13) [2013] ZALCJHB 269 (21 October 2013)*

review application (on the date of the hearing of this application), and after the applicant had launched this application is further evidence of bungling on the part of the respondent which consequences cannot be visited upon the applicant. The filing of a rescission application was clearly an irregular step, and the subsequent filing of a review application on the date of the hearing of this application is clearly belated. Mr Khoza's submissions in court to the effect that the respondent wanted an opportunity to research the issues and to decide what to do in the light of the impugned settlement agreement can hardly be an excuse not to deal with the matter diligently and promptly from 02 August 2017. Furthermore, and to reiterate, there is no basis, at least on a *prima facie* basis to conclude that the agreement was not voluntarily entered into.

25.10 Any hardship claimed by the respondent is clearly self-inflicted, and to the extent that Mashilwane had acted outside of his powers, and further in view of my conclusions regarding his allegations that he was 'instructed' or 'coerced' by the Commissioner, that is a matter which the respondent should in my view, deal with internally.

[26] In *South African Post Office Ltd v CWU obo Permanent Part-Time Employees*[16]*,* it was confirmed that the provisions of section 158(1)(c) of the LRA empowers this Court to make any settlement agreement, concluded in respect of a matter arising within the scope of the LRA, an order of court. The LAC however added that this did not mean that the order was there for the taking, as the Court has a discretion whether to grant such an order even if it otherwise met the criteria provided in section 158(1A)[17], read with section 158(1)(c) of the LRA[18]. In *Greef v Consol Glass*[19]*,* it was further held that;

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[16] *(2014) 35 ILJ 455 (LAC)*

[17] Section **158: Powers of Labour Court**

(1) **…**

(1A) For the purposes of subsection (1)*(c)*, a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court,

> 'So properly interpreted, in terms of s 158(1)(c), read with s 158(1A), the Labour Court may make any arbitration award an order of court and may only make settlement agreements, which comply with the criteria stated in s158(1A), orders of court. A settlement agreement that may be made an order of court by the Labour Court in terms of s 158 (1)(c), must (i) be an order of court by the Labour Court in terms of s 158 (1)(c), must (i) be in writing, (ii) be in settlement of a dispute (i.e it must have as its genesis a dispute; (ii) the dispute must be one that the party has a right to refer to arbitration, or to the Labour Court for adjudication, in terms of the LRA; and (iv) the dispute must be of the kind that a party is only entitled to refer to arbitration in terms of s 22(4), or s 74(40 or s 75(7)'

[27] In this case, I am satisfied that the settlement agreement in question met the requirements set out in section 158 (1A) of the LRA as it is in writing; was a settlement of an alleged unfair dismissal dispute, which dispute the applicant had a right to refer to, and was indeed referred to arbitration in terms of the provisions LRA.

[28] It is trite that the effect of any settlement agreement is to dispose of a matter if it resolves all aspects of the dispute between parties, and also has the effect of compromising a claim[20]. Such agreements essentially precludes parties from taking any further legal action in respect of the dispute resolved, and it would therefore be undesirable or untenable for such disputes to continue.

[29] As it was further held in *Greef*[21] that lingering, unsettled disputes are not conducive to stability in the workplace and militate against the principle aims of the LRA in that respect. The LAC added that making settlement agreements orders of court may be regarded as important for the protection

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excluding a *dispute* that a party is only entitled to refer to arbitration in terms of section 22(4), 74(4) or 75(7).

[18] At para 2. See also *Greef v Consol Glass (Pty) Ltd (2013) 34 ILJ 2385 (LAC)* at para 20, where it was held that;

> 'It is noteworthy that s158(1)(c)does not provide that the Labour Court is obliged to make a settlement agreement an order of court. So that even if a settlement agreement complies with the criteria's stated in s158(1A), the court may, nevertheless, in the exercise of its overarching discretion decide not to make it an order of court. Section 158(1)(c) provides that the Labour Court 'may' make it an order of court. This means that the Labour Court has a discretion in that regard, which it would have to exercise in a judicial manner, taking into account all the relevant facts and circumstances.'

[19] at para 19

[20] *NUM & Others v Crown Mines Limited* [2001] 7 BLLR 716 (LAC) at para 26.

[21] *Supra* para 26

of the rights of the parties to the settlement. It not only facilitates and enables execution through court processes, but would enable an aggrieved party to institute contempt proceedings if the order of court is not complied with[22].

[30] In the light of the conclusions reached regarding urgency, and the exceptional circumstances prevalent in this matter as discussed in this judgment, I am further not convinced that any facts were placed before the Court that can be said to militate against making the settlement agreement entered into between the parties, an order of court. It is further my view that it would be untenable, let alone iniquitous for this court not to grant the relief sought in view of the fact that essentially, the applicant has no alternative remedy as the doors for his claim at the CCMA have been closed as a result of the settlement agreement. The argument advanced on behalf of the respondent that the applicant will obtain substantial redress in due course is clearly misplaced, as through the agreement signed on its behalf, the applicant cannot seek substantial redress anywhere other than in this Court. To not grant the order would further prejudice the applicant under the circumstances which are clearly not of his own making. Accordingly, I see no reason why I should not exercise my discretion, and grant the order sought by the applicant.

Costs:

[31] This court in accordance with the provisions of section 162[23] of the LRA must take into account, the requirements of law and fairness when making an award of costs. The circumstances of this case are such that there is nothing

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[22] At para 21

[23] Section 162: **Costs**

(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Labour Court may take into account -

(a) whether the matter referred to the Court ought to have been referred to arbitration in terms of *this Act* and, if so, the extra costs incurred in referring the matter to the Court; and

(b) the conduct of the parties -

(i) in proceeding with or defending the matter before the Court; and

(ii) during the proceedings before the Court.

(3) The Labour Court may order costs against a party to the *dispute* or against any person who represented that party in those proceedings before the Court.

in law or fairness that militates against an order of costs, and there is further no reason why the applicant should be burdened with costs resulting from the respondent's conduct in dealing with this matter. I however do not deem it necessary to make any cost order in respect of the postponement of the matter on 15 August 2017.

Order:

[32] In the premises, the following order is made;

1. The applicant's application is dealt with as one of urgency, and the normal Rules of this Court relating to time limits and the manner of service are dispensed with.

2. The settlement agreement entered into between the applicant and the respondent on 2 August 2017 under the auspices of the CCMA, and under case number GATW6373-17 is hereby made an order of Court in terms of the provisions of section 158 (1) (c) of the Labour Relations Act.

3. The respondent is ordered to pay the costs of this application.

4. No order as to costs is made in respect of the postponement of this matter on 15 August 2017

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E Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Adv. B Ford

Instructed by: Ndumiso Voyi Inc. Attorneys

For the Respondent: Mr B Khoza of Khoza & Associates Inc. Attorneys