



Of interest to other judges

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case No: J 1818/17

In the matter between:

**SOUTH AFRICAN MARITIME
SAFETY AUTHORITY ('SAMSA')**

Applicant

and

MURORO DZIRUNI

First Respondent

**THE SHERIFF OF THE HIGH
COURT, PRETORIA EAST**

Second Respondent

Heard: 07 November 2017

Delivered: 15 December 2017

Summary: (urgent application to stay a writ – application for leave to appeal still to be condoned – writ stayed notwithstanding pending condonation application - costs)

JUDGMENT

LAGRANGE J

Introduction

- [1] This is an application for a stay of a writ launched on 31 October 2017. On the same day, the second respondent launched an application for contempt on account of the applicant's failure to reinstate the second respondent in terms of the court order mentioned below.

Background

- [2] The first respondent ought to have been reinstated in terms of the settlement agreement with retrospective effect to 31 March 2017. This agreement was made an order of court on 31 August 2017, but despite receiving the judgement, SAMA did not respond. Eventually, on 8 September 2017, first respondent's attorneys put the applicant on terms to indicate whether or not it intended to comply with the order. He also advised that it would apply for a writ of execution to obtain payment of the back pay due. In response to a further approach, all SAMA was prepared to do was to send an email requesting time to "allow us to revert in due course" a somewhat meaningless response since the first respondent was clearly entitled to a reply without any further delay, armed as he was with a court order in his favour.
- [3] Eventually on 14 September 2017, the respondent's attorneys notified the first respondent that it wished to prosecute a review application it had launched on 16 August 2017. The first respondent responded by pointing out what should have been glaringly obvious to SAMA's attorneys if not to SAMA itself, namely that no review application could be entertained because the settlement agreement had already been made an order of court. The first respondent advised on 19 September that it would proceed with the contempt application and that it intended to seek a writ of execution to obtain backpay owing in terms of the settlement agreement.
- [4] On 19 October 2017, the applicant also applied for leave to appeal against the judgement making the settlement agreement and order of court. On 24 October 2017, the applicant also applied for condonation for the late filing of the application for leave to appeal. The application for leave to appeal was only filed once the first respondent had attached the applicant's

assets. Both these applications are opposed but no decision has been handed down in respect of either the condonation application or the application for leave to appeal.

- [5] Prior to launching this application, the parties had been corresponding with each other about the effect of the application of leave to appeal being noted. The respondents were of the view that as the application for leave to appeal was filed late and had not been condoned there was no application for leave to appeal pending and therefore section 18 (1) of the Superior Courts Act number 10 of 2013, which suspends the effect of a court order except in exceptional circumstances was inapplicable.
- [6] The principal basis of opposition to the application raised by the ^{1st} respondent is that the application should be dismissed for lack of urgency, because the urgency is self-created. It is clear on the papers that the applicant was aware of the existence of the court order on 1 September 2017. It took the applicant nearly two months to launch this application. The applicant's conduct in the way it has resisted giving effect to the court order is characterised by the dilatoriness. I am strongly inclined to dismiss the application for lack of urgency, but it is evident that the parties may return again to court to determine the merits of the application to stay execution based on the applicability of section 18 (1) of the Superior Courts act in circumstances where the late filing of an appeal has not yet been condoned. It would be a complete waste of both parties' resources and the courts time for yet another application to be entertained on this issue. In the circumstances, notwithstanding the dilatoriness of the applicant it is appropriate to deal with the crisp legal question.
- [7] Section 18 (1) of the Superior Courts Act states that:
- “Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.”
- [8] On the face of it, until such time as condonation for the late filing of the application for leave to appeal has been granted, there is no pending

application for leave to appeal before the court. On the other hand, although the application for leave to appeal was filed late, the applicant did apply promptly for condonation for the late filing thereof. The court has a discretion whether or not to stay a writ of execution. In my view, it would be unnecessarily rigid of the court not to allow the application for condonation for the late filing of the appeal to be determined when that ruling will materially affect the applicability of section 18 (1). Consequently, I am inclined to stay the execution of the writ at least until such time as that ruling is made.

- [9] On the question of costs however, as the applicant appears to be engaged in a generally dilatory course of conduct it would not be appropriate that it be ordered its costs in this application.

Order

- [1] The application is dealt with as one of urgency, and non-compliance with the Rules of the Labour Court relating to time periods and service is condoned.
- [2] The writ of execution issued out of the Labour Court on 16 October 2017 under case number J1818/2017, which was attached as Annexure “JC1” to the founding affidavit and all steps taken thereunder, are stayed pending the determination of the condonation application in respect of the late filing of the application for leave to appeal against the judgement of the court in this matter handed down on 31 August 2017.
- [3] No order is made as to costs.

Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

B Khoza of Khoza &
Associates Inc.

RESPONDENT:

B Ford instructed by
Ndumiso Voyi Inc.

LABOUR COURT