



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: J2792/2017

In the matter between:

SOUTH AFRICAN MUNICIPAL

WORKERS UNION

Applicant

and

CCMA

First Respondent

THEMBEKILE NSIBANYONI N.O

Second Respondent

THABILE GOODNESS COKA

Third Respondent

RULING: APPLICATION FOR LEAVE TO APPEAL

Date of ruling: 7 February 2018

VAN NIEKERK J

- [1] This is an application for leave to appeal against the order made by this court on 31 October 2017. The order issued by the court was that the execution of an arbitration award under case number GAJB 218/2017 be stayed, pending the outcome of an application for review filed under case number JR 2397/2017, with the rider that the order would lapse should the applicant fail to furnish security as required by s 145 (8) of the LRA within 7 days.
- [2] The applicant appears to seek leave to appeal against the findings that the order staying the writ of execution was conditional on the applicant filing security within 7 days, and the order for costs.
- [3] There is no merit in the application. First, while it may be correct that the issue of security had not been raised in the papers, the LRA requires a party seeking review to furnish security in the amount reflected in s 145 (8). Indeed, the section provides that the filing of a review application does not suspend the execution of an arbitration award unless security is provided. The court has a discretion to stay a writ of execution pending the outcome of a main application – the discretion in this instance was exercised entirely within the ambit of the statutory framework.
- [4] In any event, this element of the court's order does not constitute a final order. It is an interim order, pending the outcome of the underlying review, and conditional only on the applicant's compliance with s 145. Interim orders are not ordinarily appealable, and the present application stands to be dismissed on this basis alone.
- [5] In so far as the applicant seeks leave to appeal against the costs order, the order was occasioned by the applicant's failure to comply with S 145 (8). The court has a broad discretion in terms of s 162 to make orders for costs according to the requirements of the law and fairness. This discretion is not lightly interfered with by an appeal court – indeed, leave to appeal against costs orders only is not ordinarily granted.

For these reasons, I make the following order:

1. Leave to appeal is refused, with costs.

André van Niekerk

Judge