



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable/Not Reportable

Case No: J 2010/17

In the matter between

BOOST PROPERTY MANAGEMENT

Applicant

and

BIFAWU obo R MABOTJA

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

SHERIFF OF COURT: JOHANNESBURG

NORTH

Third Respondent

Heard: 1 September 2017

Ex-tempore judgment: 1 September 2017

Date Edited: 28 March 2018

EX-TEMPORE JUDGMENT

VAN NIEKERK, J

- [1] This is an application to stay the execution of a writ, more accurately in terms of prayer 2 of the notice of motion to stay the enforcement of a default arbitration award issued under case number GAJB24886/16, pending the outcome of a rescission application filed by the applicant on 31 July 2017.
- [2] What the court has before it is a copy of the application for rescission that is dated 26 July 2017. That application was clearly served on the sheriff. The third respondent is a stamp to that effect. What the first respondent contends is that the rescission application was never filed on it or its members.
- [3] Now, it is not the function of this court in an application to stay a writ to make decisions either substantive or procedural in relation to the rescission application. That is the concern of the CCMA and the commissioner must make a decision within 14 days on the merits of that application; whether those merits go to substance or whether they go to issues such as proper service.
- [4] The applicant has put up a security bond in circumstances where strictly in terms of section 145(8) it is not obliged to do so in response to an application for rescission. But be that as it may, security has been furnished. My reading of section 145(8) is that: where a security bond is furnished, the execution of enforcement of an arbitration award ought to be stayed. There is no reason in principle why the same should not apply in relation to a pending application for

rescission.

[5] There is no real prejudice to the first respondent, the union and its members. The stay is granted for a very limited period, pending the outcome of the rescission application. Should the application for rescission be dismissed, then the union and its members would be entitled to satisfaction of the arbitration award.

[6] What an application such as this contemplates is a balancing of the parties' competing interests. In my view, given that the stay is for an extremely limited period, given the fact that security has been provided for the satisfaction of the default award, the interest of the applicant in the present instance must prevail, for those reasons, I make the following order:

1. The enforcement of the default arbitration award issued under case number GAJB24886/16 is stayed, pending the outcome of the rescission application filed by the applicant on 31 July 2017.
2. There is no order for costs.

André Van Niekerk
Judge of the Labour Court

LABOUR COURT