



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1886/18

In the matter between:

MATTHEW GEORGE MCDONALD

Applicant

and

TRSS 24 HOUR REACTION (PTY) LTD

First Respondent

CHARLES PETER VICTOR

MOLYNEUX URBAN

Second Respondent

RENATO RAMOS

Third Respondent

KENNETH BRETT FISHER

Fourth Respondent

PENNY ARENDS

Fifth Respondent

SHERIFF SANDTON NORTH

Sixth Respondent

Heard: 13 June 2018

Delivered: 28 June 2018

JUDGMENT

MAHOSI.J

Introduction

[1] This is an urgent application in terms of which the applicant seeks an order in the following terms:

- '1 Dispensing with the time limit prescribed by the rules of the above Honourable Court and dealing with this application on an urgent basis.
2. The 1st to 4th Respondents pay an amount equal to the judgment order in the main application of applicant together with interest accrued from 30th May 2017 to, as security in the judgment order. Such amount to be paid into the Trust account of the Sheriff Sandton North.
3. The 1st to 4th Respondents to reimburse and pay the applicant the wasted costs of the sheriff for attempted removal of the attached goods on the 6th February 2018.
4. The 2nd to 5th Respondents are found in contempt of Court.
5. Necessary expenses incurred by the Applicant in bringing this application.
6. Further and alternative relief.

Alternatively

1. The 1st to 5th Respondents to hand over to the Sheriff Sandton North forthwith the moveable property as described in the writ of execution. The Sheriff Sandton North to obtain the services of the professional appraiser to value the goods as described in the writ. Such costs of the appraiser to be paid by the 1st to 4th Respondents.

2. The 1st to 4th Respondents to pay in the amount in difference (if any) between the valuation of the said attached property as above and the judgment order together with interest it has accrued, into the trust account of the Sheriff Sandton North within 24 hours after Sheriff Sandton North has provided applicant and the aforesaid respondents with such a valuation certificate issued by the appraiser.
3. The 1st to 4th Respondents to pay for the costs of the Sheriff to remove and store the property as described in the writ, such storage charges to be paid by the aforesaid Respondents from date of removal to date the matter in the main application of applicant comes to finality.
4. The 1st to 4th Respondents to adequately insure and keep it insured, the movable property described in the writ against theft, fire and/or any other insurable risk. Such costs of insurance to be paid by the aforesaid 1st to 4th Respondents.
5. The 1st to 4th Respondents to reimburse and pay the applicant the wasted costs of the Sheriff for the attempted removal of the attached goods on the 6th February 2018.
6. The 2nd to 5th Respondents are found in contempt of court.
7. Necessary expenses incurred by the Applicant in bringing this application.
8. Further and alternative relief.'

Material background facts

[2] The facts in this matter are mainly common cause or not in dispute. On 5 December 2017, this Court granted a default judgment in favour of the applicant against the first respondent. The applicant served the order and a writ of execution on the respondent on 6 December and on 11 December 2017. On 11 December 2017, the applicant brought a contempt of court application against the respondents. On 29 January 2018 the Sheriff attended the premises of the first respondent and attached two vehicles belonging to the first respondent.

- [3] Despite the attachment of the respondent's movable property the applicant allegedly afforded the first respondent an opportunity to satisfy the order and warned the respondent that should it persist in ignoring the order, further steps would follow. The Court order was still not complied with.
- [4] The applicant then instructed the Sheriff to remove the attached goods. On 6 February 2018 the Sheriff attended the premises of the respondent to remove the attached goods. Upon arrival, the Sheriff discovered that the respondent had removed the attached goods. It came to the applicant's attention that the respondents have been using the attached property on a daily basis.
- [5] On 6 February 2018, the first respondent served and filed an application for the rescission of the default award, which application was served and filed under case number J 1569/17. On the same date, the first respondent brought an urgent application to stay the execution of the writ, which application was brought under case number J 305/18 in this Court.
- [6] On the 22 February 2018, this Court ordered that:
- 'The enforcement of the Court Order issued by Honorable Justice Gush on 5 December 2017, under case number J 1569/17, is stayed until the finalization of the first respondent's rescission application filed under the same case number.'
- [7] The first respondent's rescission application is still pending.
- [8] The applicant's submission was that the staying of the writ of execution does not in any way cancel the writ or give the respondents any legal right to use the attached goods on a daily basis and/or to have the same removed. Such an act, argued the applicant, is unlawful and in direct contempt of court.
- [9] The first respondent opposed this application and submitted that the applicant failed to present any evidence to denote any urgency in relation to the relief sought. The first respondent contended that the applicant is effectively attempting to appeal the order granted to stay the writ of execution. This contention was

based on the fact that all the facts set out in the current application were also before this Court when the stay application was heard.

Urgency

[10] Rule 8 of the Rules of this Court, which governs the urgent applications, provides as follows:

- '(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.'

[11] The first respondent opposed this application for its lack of urgency and merit. In *Jiba v Minister of Justice and Constitutional Development and Others*,¹ this Court considered Rule 8 and stated as follows:

'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.'²

[12] The applicant discovered on 6 February 2016 that the first respondent removed the attached vehicles and that they have been used on a daily basis. This application was filed on 4 June 2018 and it was set down to be heard on 12 June 2018. In his founding affidavit, the applicant submitted that the respondents' failure to comply with the writ issued out of this Court is itself serious and urgent.

¹ (2010) 31 ILJ 112 (LC).

² At para 18.

The applicant has not explained why this application was brought almost three months after being aware of the first respondent's use of the attached goods.

- [13] As stated above, Rule 8 of the Rules of this Court requires the applicant to set out an explanation why the relief is sought on an urgent basis and why the timeframes set out in the Rules should be abridged. The applicant is required to show why the rules of this Honorable Court relating to forms and service should be dispensed with. The Applicant has, in my view, failed to make out a case for urgency and it is for that reason alone that its application stands to fail.

Costs

- [14] In terms of section 162 of the LRA, the Court has a wide discretion in awarding costs. The Constitutional Court has recently reiterated in *Zungu v Premier of the Province of Kwa-Zulu Natal and Others*³, that costs orders should be made in accordance with the requirements of law and fairness. In this matter, I am of the view that there should be no order as to costs.

- [15] In the circumstances, I make the following order.

Order

1. This application is struck off the roll for want of urgency.
2. There is no order as to costs

D Mahosi

Judge of the Labour Court of South

Africa

³ (2018) 39 ILJ 523 (CC).

Appearances

For the applicant: Mr M.G Macdonald (In person)

For the first respondent: Advocate A.J Nel

Instructed by: Lee and Mcadam Attorneys

LABOUR COURT