



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 3217/18

In the matter between:

ROAD TRAFFIC MANAGEMENT CORPORATION

Applicant

and

TREVOR MABENA

First Respondent

SHERIFF CENTURION EAST

Second Respondent

Heard: 13 September 2018

Delivered: 20 September 2018

JUDGMENT

MAHOSI, J

[1] This is an opposed urgent application for an order in the following terms:

- '1. That this application be treated as one of an urgent nature as provided for in Rule 8 of this Honourable Court's Rules, and condoning any non-

compliance with rules pertaining to time periods and manner of service.

2. Ordering that the enforcement award/writ of execution obtained under case number GATW14868/16 at the Commission for Conciliation Mediation and Arbitration (the CCMA), be stayed, pending the finalisation of the Applicant's Appeal and/or Rescission under case number J3112/2017 and/or Review Application under case number JR1317/17 in favour of the Applicant.
3. Costs of this application.
4. That further or alternative relief.'

Brief background facts

- [2] Prior to outlining the applicant's case in detail and considering the issues that gave rise to the claim, it is necessary to summarise the facts which form relevant background to the dispute between the parties.
- [3] On 15 May 2017, an arbitration award was issued by the Commission for Conciliation, Mediation and Arbitration (CCMA) in favour of the first respondent under case number GATW14868-16. The applicant became aware of the award on 17 May 2017 and instituted proceedings in this Court under case number JR1317/2017 to review and set aside the award.
- [4] On 6 December 2017, the first respondent launched an application in this Court to make the award an order of the court which application was opposed by the applicant. The Court granted the order on 30 April 2018.
- [5] On 1 June 2018, the first respondent served the applicant with the court order and a correspondence in terms of which he informed the applicant that he will report for duty on 11 June 2018.
- [6] The first respondent reported for duty on 11 June 2018, but was denied entry by the applicant on the basis that there was a pending review application. Owing to the applicant's excessive delay in prosecuting the review application, the first respondent moved an application for an order to archive

the review application for failure to comply with the rules of this Court which order was granted in chambers on 25 June 2018. On 7 July 2018, the applicant served the first respondent with an application to revive the review application and the matter is still outstanding.

- [7] On 7 August 2018, the Court granted an order for the quantification of the award in favour of the first respondent after which the first respondent approached the Registrar for the writ of execution.
- [8] The applicant filed an urgent application to stay the enforcement of the writ of execution pending the finalisation of the review application under case number J3112/17. The application was heard and dismissed with costs on 30 August 2018 by Judge Van Niekerk.
- [9] On 6 September 2018, the applicant served and filed this application to stay the execution of the same writ, under a new case number, J3217/18.
- [10] The first respondent opposed this application and raised a special plea of *res judicata* on the basis that this Court has already dismissed the application to stay the execution of the writ.

Applicable legal principles

- [11] It is trite that the plea of *exceptio res judicata* is available where another court has already pronounced finally on the same cause of action between the same parties with respect to the same subject matter or thing.¹
- [12] As aforesaid, on 28 August 2018, the applicant sought the stay of the execution of the writ, pending the finalisation of a review application. In the current application, instead of applying to stay the execution of the order and/or judgment of Judge Van Niekerk pending the appeal, the applicant seeks the stay of the execution of the same writ on an urgent basis using a different case number, pending the filing and finalisation of the appeal and/or rescission application under case number J31122017 and/or review application under case number JR 1317/17.

¹ See: *Nehawu obo Kgekwanane v Department of Development Planning and Local Government* (2015) 36 ILJ 1247 (LAC).

[13] This step is an irregular one. In fact, it amounts to an abuse of the court process and worthy of condemnation because the relief that the applicant seeks in this application is the same as the one it sought in the urgent application launched on 28 August 2018. This is the applicant's attempt to avoid the consequences of an order issued by this Court. If allowed, this could not only undermine the integrity of this Court, but also of our justice system.

[14] The pending application for rescission relates to the court order in terms of which the arbitration award was made the order of the court. This is the same award that the applicant sought to review which review was archived. Although the application to reinstate the said review application is pending, this Court has already pronounced on the application to stay the execution of the writ flowing from the same award. By granting an order in terms of which he dismissed the application to stay the execution of the writ, Judge Van Niekerk pronounced finally on the issue. The issues raised by the applicant in the current matter are therefore regarded in law as *res judicata* given the said order.

[15] In the premise, I make the following order:

Order

1. The application is dismissed with costs.

D Mahosi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate P. Verveen

Instructed by: Mafuyeka Attorneys

For the First Respondent: Mr Trevor Mabena (In person)

LABOUR COURT