



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J4002/2018

In the matter between:

FIDELITY SECURITY SERVICES (PTY) LTD

Applicant

and

THE SHERIFF, ROODEPOORT

First Respondent

MTWU obo S. KHOZA

Second Respondent

Heard: 20 November 2018

Delivered: 22 November 2018

JUDGMENT

MAHOSI. J

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

- '1. That this application be treated as one of urgency as provided for in terms of Labour Court Rule 8 and that the applicant's failure to comply with the normal time periods, forms and services as provided for in terms of the Labour Court Rule 7 be condoned.

2. That the writ of execution issued by the Labour Court on the 8th of March 2018 under case number JS832/16 be stayed, pending the rescission application under case number J3112/2017 and/or Review Application under case number JS832/16.
3. That the respondents be ordered to pay the costs of the application, only in the event that it is opposed.
4. That the applicant be granted such further and/or alternative relief as the above Honourable Court deem necessary.'

- [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 that form relevant background to the dispute between the parties.
- [3] The applicant employed the third respondent's member, Mr S Khoza (employee), on 23 June 2012. Following his dismissal on 8 June 2016, the second respondent referred an unfair dismissal dispute relating to retrenchment to the Commission for Conciliation, Mediation and Arbitration (CCMA). The matter was conciliated unsuccessfully after which the matter was referred to this Court for adjudication. Subsequently, the second respondent applied for default judgment and on 22 August 2017, this Court issued a court order in favour of the employee. On the strength of the court order, the second respondent obtained a writ of execution and instructed the first respondent to attend to the premises of the applicant to attach its property.
- [4] On 13 June 2018, the first respondent arrived at the premises of the applicant in order to attach property in terms of the writ of execution. It was on this day that the applicant was allegedly served with the court order. On 2 November 2018, the first respondent contacted the applicant to inform it they would be returning to remove the attached property on 5 November 2018. On 7 November 2018, the applicant filed this application together with the application for rescission of the court order.

- [5] The second respondent opposed this application on the basis that the urgency claimed in this matter is self-inflicted as the applicant became aware of the order on 13 June 2018.
- [6] The explanation proffered by the applicant for the delay in bringing this application was that following the first respondent's visit, it instructed its attorneys to obtain a copy of the Court file to determine what had occurred in the matter. It then instructed its attorneys to proceed with this application. However, for the attorneys to proceed with the application they had to obtain further information and documents from the applicant which were archived with metro file in a warehouse in Midrand. The applicant alleges that this took time as it had search through many boxes to obtain the records.
- [7] The applicant further submitted that while searching for documents and information, there was an attempt to settle the dispute. Further that while settlement was being considered and discussed, the applicant did not proceed with its rescission application nor this application. The second respondent denies knowledge of any settlement negotiations. In its replying affidavit, the applicant submitted that it was in a process of attempting to settle the matter by leaving numerous messages for the employee's representative to contact it back. Further that the first respondent's attempt to remove the applicant's property on 2 November 2018 satisfies the requirement of urgency.
- [8] The requirements for urgency are trite.¹ Rule 8 of the Rules of this Court requires a party seeking urgent relief to set out the reasons for urgency and to show why the rules of this Court relating to forms and service should be dispensed with. In *Maqubela v SA Graduates Development Association and Others*,² considerations for urgency were set out as follows:

'Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later

¹ See: *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W).

² (2014) 35 ILJ 2479 (LC) at para 32.

stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary.’

- [9] In the current case, the applicant seems not to appreciate the responsibility that rests on it as a litigant that seeks an indulgence from this Court, that is to set out reasons that make this matter urgent. A reading of its submission in respect of urgency exhibits tardiness and lack of due haste in bringing this matter. This Court must caution against the applicant that the latitude extended to parties to dispense with the rules of the court in circumstances of urgency is not available to parties who are dilatory to the point where their very inactivity is the cause of the harm on which they rely on to seek relief.³
- [10] The reasons advanced by the applicant as to why the matter is urgent are far from being reasonable. On its version, it became aware of the court order it seeks to rescind on 13 June 2018 but brought this application together with the rescission application only after the first respondent’s attempt to remove its property on 2 November 2018. The explanation that it took about four months to search for the employee’s details amounts to no explanation at all. The attitude exhibited by the applicant is that which would ordinarily have the consequence of its matter struck off the roll for lack of urgency. However, having had regard to the pleadings before me, and in keeping with the tenets of the Labour Relations Act⁴ (LRA), to resolve labour disputes speedily, I am of the view that the matter deserves full determination.
- [11] This Court may, in terms of section 145(3) of the LRA, stay the enforcement of the arbitration award pending its decision. It is common cause that a rescission application has since been launched in respect of the court order, although this was done some four months after the court order was granted. To an extent that the underlying *causa* for the writ is still the subject matter of an ongoing dispute between the parties and further that the applicant has no alternative remedy that will provide the similar relief it seeks

³ *Transport And Allied Workers Union of South Africa v Algoa Bus Company (Pty) Ltd and Others* [2015] 7 BLLR 738 (LC).

⁴ Act 66 of 1995 as amended.

in this application and that it requires to protect its rights, I am of the view that the interests of justice combined with quest for finality on this matter requires that a discretion be exercised in favour of the applicant.

[12] I have had regard to the issue of costs. In terms of section 162 of the Labour Relations Act⁵, 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*⁶ that costs orders should be made in accordance with the requirements of law and fairness. In this matter, I am of the view that the requirements of law and fairness dictate that there should be no order as to costs.

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

Order

1. This application is treated as one of urgency as provided for in terms of Labour Court Rule 8 and the applicant's failure to comply with the normal time periods, forms and services as provided for in terms of the Labour Court Rule 7 is condoned.
2. The writ of execution issued by the Labour Court on 8 March 2018 under case number JS832/16 is stayed pending the rescission application under case number JS832/16.
2. There is no order as to costs.

D Mahosi

Judge of the Labour Court of South Africa

⁵ 66 of 1995, as amended.

⁶ (2018) 39 ILJ 523 (CC)

Appearances:

For the applicant: Ms L. Foot of Crawford Attorneys

For the first respondent: Advocate Mosala

Instructed by: Matlatle Attorneys

LABOUR COURT