



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: J 4422/2018

In the matter between:

STEELDALE (PTY) LTD

Applicant

and

CLEMENT PHILLIP KWAKWA

First Respondent

THE COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Second Respondent

SHERIFF – POLOKWANE

Third Respondent

Heard: 20 December 2018

Delivered: 28 December 2018

JUDGMENT

TLHOTLHALEMAJE, J

- [1] The applicant approached this Court on an urgent basis to seek an order to stay the writ of execution issued under case number LP2756/18 under the auspices of the second respondent (CCMA) dated 26 October 2018. The applicant further seeks that the attachment effected on 8 November 2018 pursuant to the execution of the writ by the third respondent (Sheriff) be set aside. The first respondent (Kwakwa) opposed the application.
- [2] On the applicant's averments, upon the writ of execution having been obtained, the Sheriff has effected an attachment on its entire office content as well as of its vehicle. These are the items it requires to conduct its business,

but it has been barred and prevented from using them. Further in the light of the haste with which the applicant approached this Court, it cannot in my view be argued that the urgency in this matter is self-created.

- [3] The facts leading to this application are essentially common cause and to some extent unusual. Kwakwa having been dismissed by the applicant approached the CCMA with an alleged unfair dismissal dispute. The matter came before an arbitrator and an award was issued on 13 August 2018 in terms of which Kwakwa's dismissal was found to be procedurally and substantively unfair. The applicant was ordered to reinstate Kwakwa with retrospective effect and to pay an amount of R171 500.00 in back-pay. Kwakwa was to tender his services on 16 September 2018.
- [4] Kwakwa attended at the office of the applicant on various occasions in September 2018 to seek compliance with the arbitration award. When he could not resume his services he then approached the CCMA in September 2018 to have the award certified in terms of section 143 of the LRA.
- [5] The award was certified and the applicant at some point advised Kwakwa that it intended to approach the Court with a review application. On 22 October 2018, the applicant offered Kwakwa a new position. He had resumed his employment from 27 November 2018. In accordance with the 'new' contract of employment, his employment with the applicant is deemed to be with retrospective effect from August 2018. In effect, the applicant has partially complied with the arbitration award, whilst at the same time proceeding to challenge it. The review application was launched 29 October 2018.
- [6] Mr Biggs for the applicant contended that the approach of partially complying with the arbitration award and thereafter reviewing it is practical in the circumstances and was adopted for the benefit of Kwakwa.
- [7] As at this stage, the review application is pending before the Court. An application for the late filing of the review application has also been filed. In accordance with the provisions of section 145(7) of the LRA, the institution of

review proceedings is stayed if security is furnished to the satisfaction of the Court. The applicant has furnished security in terms of the provisions of section 145(8)(b) of the LRA.

- [8] The only issue of contention in this case is that in accordance with the provisions of section 145(8)(a) of the LRA, and to the extent that Kwakwa was reinstated in terms of the arbitration award, he insists that the applicant ought to furnish security in the full amount of 24 months' remuneration. The applicant seeks to be absolved from furnishing security equal to 24 months' remuneration as Kwakwa was reinstated.
- [9] It must be stated that I fail to appreciate the vehement manner with which Kwakwa would seek to oppose this application, and to further seek to pursue the execution of the writ, especially in circumstances where part of the security was furnished, and where he had been reinstated.
- [10] On the facts, unusual as they may be, and in the light of the pending review application, the reinstatement of Kwakwa and the furnishing of the security as per annexure 'E' to the founding affidavit, the Court, in the exercise of its discretion, is satisfied that there is no basis not to absolve the applicant from the payment of the full 24 months' remuneration as security.
- [11] Kwakwa has not demonstrated in what manner, shape or form, he stands to suffer any prejudice if the full security is not furnished. I fail to appreciate the reason he seeks to enforce the award in the manner he does when it has been partially complied with. The circumstances of this case would have been different had he not been reinstated.
- [12] It is appreciated as argued on behalf of Kwakwa, that the fact of a reinstatement or re-employment is not a consideration in the determination of whether an applicant should be absolved from payment of the prescribed security. The circumstances of this case however are such that the fact of a reinstatement can however not be ignored in a consideration of real or substantial injustice to the applicant. The aim of the furnishing of security is essentially to compel a reviewing party to ensure that a review application is timeously prosecuted, and there is no basis for a conclusion to be reached in

this case that it is the applicant's intention not to timeously prosecute the review application pending before the court.

[13] In the circumstances, the following order is made;

Order:

1. The application is heard as one of urgency in accordance with the provisions of Rule 8 of the Rules of this Court, and the applicant's failure to comply with the normal time periods, forms and services as contained in Rule 7 is condoned.
2. The writ of execution issued by the second respondent under case number LP2756/18 is stayed pending the finalisation of the review application brought by the applicant under case number JR22446/18.
3. The attachment effected by the third respondent in terms of the warrant of execution on 8 November 2018 under case number LP2756/18 is set aside.
4. The applicant is absolved from furnishing full security as contemplated in section 145(8)(a) of the Labour Relations Act, and the security furnished in the amount of the compensation as per the arbitration award is to the satisfaction of this Court within the meaning of section 145 (7) of the LRA.
5. There is no order as to costs.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants:

J. Biggs of Snyman Attorneys

For the First Respondent:

S Manganye

Instructed by:

Mohlabi Inc

LABOUR COURT