IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J1834/19

In the matter between:

POPELA MAAKE INCORPORATED **Applicant**

and

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION **First Respondent**

MUSOLWA RAPLALANE **Second Respondent**

LEBOKGANG LIONEL NTSIE **Third Respondent**

Heard: 10 September 2019

Delivered: 13 September 2019

JUDGMENT

MABASO, AJ

Introduction

[1] The genesis of this application stems from an arbitration award issued by the second respondent against the applicant in favour of the third respondent, wherein the former was ordered to pay the third respondent an amount of R48 000.00. The applicant seeks an order to stay the enforcement of the award pending finalisation of the review application.

[2] Ms Maxeleju, correctly submits that this Court has to follow the principle as rehashed by this Court in *Bolt Engineering Distributors v Lorrain Classens*[1] regarding stays of enforcement of the writ of execution. However, this case cannot be read in isolation from the provisions of section 145 (7) and (8) of the Labour Relations Act[2] (LRA).

[3] Ms Maxeleju argued on the strength of the applicant's papers that there are good prospects of success in the review application, therefore, this Court should use its discretion in its' favour that they should not comply with the provisions of section 145 (7) read with sub section (8) of the LRA in that the applicant should be exempted from paying security. It is further argued that in case this Court concludes that the applicant cannot be exempted *"it determines the satisfaction amount to be furnished as security as the compensation awarded is too steep for the applicant"*[3].

[4] The institution of a review application does not suspend the operation of an arbitration award, unless an applicant furnishes security to the satisfaction of the Court, and which can be either equivalent to 24 months remuneration if reinstatement is awarded or if compensation is awarded then equivalent to the awarded amount. The payment of security is peremptory unless the Court directs otherwise.

[5] A party who wishes to stay the enforcement of an award, if they have not paid the security bond as per the provisions of section 145 (7) and (8) of the LRA has to bring an application in terms of section 145 (3), as *in casu*.

[1] Unreported judgment (Case no: J1238/16). [2016] ZALCJHB 216 (24 June 2016).
[2] No 66 of 1995, as amended.
[3]

[6] The provisions of sections 145(7) and (8) was introduced in 2014, its purpose, without doubt, being a deterrent to applicants from bringing review applications in this Court with an intention of frustrating the party whose favour the award is issued and for them to have recourse should a review be unsuccessful and/or to be protected against an applicant who takes no further action in prosecuting such review which at the end of the day will only frustrate the employees armed with arbitration awards which are final and binding. No doubt that once the review application has been dismissed, sometimes an employee would be frustrated in receiving payment as stipulated in the award. As an example: if an applicant is a juristic person and you find that it has been liquidated for whatever reason then the employee would be protected, if security bond has been paid, if the review application is unsuccessful. The Labour Appeal Court (LAC) recently stated that a court which is faced with an application where it is required to exercise its discretion in matters of this nature it has to:

> "regard to the particular circumstances of the case as well as considerations of ***equity and fairness to both the employer and the employee***. Effect that the Labour Court must take into consideration is whether the employer ***is in possession of sufficient or adequate assets*** to make an order of the review court upholding the arbitration award, the principal concern being that the dismissed employee should not be left unprotected if the Labour Court decides the review application in his or her favour"[4]

[7] Considering that this is motion proceedings, and an applicant is required to detail its case in the affidavit. If this Court were to accept that a party should not comply with the provisions of section 145(7) and (8) of the LRA, for providing security bond, because it has *"robust prospects of sustaining a successful review application upon hearing of this matter*" as suggested by the applicant in this matter, I opine that a wrong message will be sent that good prospects of success in the review application should except parties from paying security bond. This would mean the provisions of section 145(7) and (8) are not relevant and will invite every employer to bring this kind of an

[4] *City of Johannesburg v SAMWU obo Monareng and another* (2019) 40 *ILJ* 1753 (LAC) at para 19.

application raising the same point. Based on that, I do not accept the reasons provided by the applicant that this Court should exempt it from paying security.

[8] The applicant has contended that the R48,000 is *"too steep"*. As the LAC, signposted that when discretion is exercised, one has to take into account the equity and fairness to both the employer and employee. This Court, in the matter of *Rustenburg*,[5] explained that for good cause to be shown, a proper explanation as to why the request should be entertained has to be advanced. The example given was that in considering good cause shown when a number of employees are employed by such company, the Court is to take into account what prejudice will be suffered if an applicant has to pay the amount, as security, that has been ordered to pay.

[9] It is also prudent to mention that the LAC, as discussed above, clearly stated that when one looks at the fairness one must take into account what will happen in a case whereby a review application is not granted in favour of the applicant, will the employee get what the arbitration award directed the employer to pay. If the answer is no, the Court has to be reluctant to grant exemption and/or reduce the amount. *In casu*, I am of the view that a statement that payment would be *"too steep"* does not meet the requirement of good cause shown in this matter. Therefore, there is a risk that the employee might not get the money as per the award should the review be dismissed.

[9] In the premises, the following order is made:

Order

1. The matter is heard as one of urgency.

2. The application to stay the arbitration award issued under case number GAJB 15871 by the second respondent is dismissed.

3. There is no order as to costs.

[5] Local Municipality v SALGBC and others, case number J779/2017, delivered on 30 June 2017.

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S. Mabaso

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms L. Maxeleju of Popela Maake Attorneys