



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-013668

In the matter between:

PEXMART CC

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

MPHO TINUS BOSHIELO N.O.

Second Respondent

MOJALEFA JACOB SIMELANE

Third Respondent

SHERIFF: TSHWANE NORTH

Fourth Respondent

Case No: 2025-013679

In the matter between:

VALARD BEARINGS (PTY) LTD

Applicant

and

**METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL**

First Respondent

SIRKHOT, IMTHIAS N.O.

Second Respondent

NUMSA obo SL KEKANA

Third Respondent

SHERIFF: BOKSBURG

Fourth Respondent

Heard: 11 February 2025

Delivered: 13 February 2025

JUDGMENT

MAKHURA, J

Introduction

[1] The applicants in these two applications are Pexmart CC (Pexmart) and Valard Bearings (Pty) Ltd (Valard). They both seek relief on an urgent basis to stay the enforcement of the arbitration awards pending the outcome of the review applications filed with this Court.

[2] Simultaneously with the stay application, they apply for an order to be exempted from furnishing security in terms of section 145(7) and (8) of the Labour Relations Act¹ (LRA) (security provisions).

[3] In the alternative to the exemption order, the applicants ask this Court to order that they furnish security lesser than what is envisaged in the security provisions. The facts in both applications are not in dispute.

The Pexmart application

[4] In Pexmart, the award was issued on 13 April 2023 under case number GATW5387-22. In terms of the award, Pexmart was ordered to reinstate Mojalefa Semelane (Semelane or the employee) and to pay him backpay amounting to R123 552.00, which is the equivalent of 11 months' remuneration.

[5] Pexmart applied to review and set aside the award on 29 May 2023. It elected not to furnish security in terms of section 148 of the LRA, nor did it apply to be exempted from the security provisions. Therefore, in terms of section 145(7), the review application does not suspend the award and the employee may enforce the award in accordance with section 143 of the LRA.

[6] The employee did not oppose the review application. As to the status of this review application, Pexmart did not address this with sufficient particularity. I asked Mr Roode, appearing for Pexmart, to refer the Court to the founding affidavit where Pexmart dealt with the issue. Mr Roode could only refer the Court to the following submission in the affidavit:

'It is submitted that the Applicant had from the onset intended to challenge the arbitration award and has prosecuted same within the parameters of time limits as set out in the LRA and the rules of the Court. On 4 September 2023, the

¹ Act 66 of 1995, as amended.

Applicant applied for the matter to be set down for hearing on the unopposed roll, but a date has not been received as yet.'

[7] No supporting documents were attached to prove that it has applied for a hearing date on 4 September 2023. In fact, there is no proof that the review application is in fact still pending before this Court and is ripe for hearing. Further, Pexmart does not set out any steps it has taken since 4 September 2023 to ensure that the application is in fact enrolled and determined.

[8] Pexmart seeks to be exempted from paying security in the amount of R393 120.00, which is made up of R269 589.00 (24 months' remuneration) plus R123 531.00 awarded by the commissioner as backpay. Pexmart stated that it is experiencing severe and ongoing financial challenges that significantly impact its operations and that it is experiencing extreme cash flow which was exacerbated by the Covid-19 pandemic. Further, Pexmart contends that the financial challenges continue despite efforts to stabilize, recover and secure refinancing.

[9] It is further contended that Pexmart implemented certain measures to improve its liquidity, stabilize operations and return to profitability. It applied before the MEIBC to be exempted from the prescribed increases in terms of the collective agreement and has embarked on a large scale retrenchment process that was scheduled to be facilitated from 3 February 2025. Simultaneously, Pexmart has implemented short time.

[10] Based on the above, Pexmart contends that it would be unduly onerous and harmful for it to be expected to comply with the security provisions.

[11] The employee opposes the application. He contends that the matter is not urgent and that any urgency is self-created. Pexmart, so the employee argues, was aware of its intention to enforce the award when it was served with the application for certification on 9 June 2023. That Pexmart was served with the application to certify the award on 9 June 2023 is common cause. The employee submitted that based on its papers,

Pexmart had not taken any steps to prosecute the review application and to seek to enroll the matter since 4 September 2023, a period of over 17 months. He submitted that the application must be struck off the roll for lack of urgency.

The Valard application

[12] In Valard, the award was issued on 29 September 2024 and certified on 5 November 2024. In terms of the award, Valard was ordered to reinstate the employee and to pay him backpay in the amount of R53 126.40. On 22 November 2024, Valard applied to review and set aside the award. The review application remains unopposed. Valard equally elected not to furnish security. The employee elected to enforce his rights by certifying the award, issuing a writ of execution and instructing the sheriff to attach Valard's assets.

[13] Insofar as the status of the review application is concerned, Valard pleaded that: 'It is submitted that the Applicant had from the onset intended to challenge the arbitration award and has prosecuted same within the parameters of time limits as set out in the LRA and the rules of the Court. The Applicant is currently in the position to supplement its founding affidavit before expiry of the 60-day period within which to file a record and the review application is thus prosecuted diligently.'

[14] Valard also seeks an order to be exempted from furnishing security, alternatively to be ordered to furnish security less than R371 884.80, which is made up of R318 758.40 (24 months' remuneration) plus the R53 124.40 backpay awarded by the commissioner.

[15] Valard explains why it should be exempted from the security provisions as follows:

'The Applicant would be required to set security of 24 months' remuneration, together with 11 months' back pay which would amount to R393 120.00.

Payment of the aforementioned amount would have a severe impact on the Applicant's cash flow in circumstances where reinstatement with back pay has been awarded. The majority of the Applicant's customers are on payment only in 30 days, with some only on 60, 90 or 120, but the Applicant still has to meet all their requirements.

It is submitted that the Applicant is experiencing severe and ongoing financial constraints that have significantly impacted their operations. The company has been facing extreme cash flow challenges which will be exacerbated by payment of security, impacting negatively on the livelihoods of the Applicant's approximately 40 employees.

It is submitted that as a result of the situation set out herein above, it would be unduly onerous and harmful for the Applicant to set the prescribed security and the Applicant would request that the Applicant is exempt from setting security, alternatively, setting security of an amount lesser than required.

It is furthermore submitted that it would be inequitable and unfair to enforce and execute the award now, whilst the review application has not been determined yet and thus justice demands that the award be stayed until the review application has been finalized.'

Analysis

[16] The common mistake made by both applicants is that they are of the view that they are required to furnish security amounting to 24 months' remuneration plus the amount of backpay awarded by the commissioner. This is obviously a misapprehension of the security provisions because employers challenging a reinstatement award need only furnish security equivalent to the employee's 24 months' remuneration. Accordingly, in terms of section 145(8), Pexmart is expected to furnish security in the amount of R269 589.00, and Valard the amount of R318 884.80.

[17] Mr Roode, appearing for the applicants in both matters, submitted that there is no duty on the employer to furnish security at the time of filing the review application. He

submitted that it is only when the award is enforced that the employer should bring the application for exemption. Therefore, so the submission continued, the catalyst for these urgent applications was the sheriff knocking at the door of the applicant. The submission was further that should the Court refuse exemption, the applicants would have to make a plan to furnish the security.

[18] In *Africabin Building Systems (Pty) Ltd v Mogaladi and others*², this Court lamented employers who continue to disregard the security provisions with impunity, and only elect to approach this Court when the employees exercised their right to enforce the awards. These are litigants, often represented by legal practitioners, who continue to disregard these security provisions. It is no doubt within their contemplation at the time of launching the review applications that if they do not furnish security or obtain an exemption from the Court, the employees will seek to enforce the award because section 145(7) states expressly that a review application does not suspend the enforcement of the award.

[19] The question is, what makes applications of these nature to stay the enforcement of the award and for exemption from the security provisions special or exceptional that they deserve urgent attention from this Court, 10 years since the promulgation of these security provisions.

[20] In my view, there is nothing special or exceptional about these applications that requires the Court to entertain them on an urgent basis. On the contrary, these are recalcitrant employers in that they have elected to defy the security provisions and took no steps to timeously apply for exemption. The urgency in these applications is not caused by the sheriff's attendance at the premises. The urgency in this matter is not triggered by the employee asserting his or her right by following the law and the sheriff attending the applicant's premises. The urgency is self-created. Litigants should not

² [2024] ZALCJHB 345; (2024) 45 ILJ 2727 (LC); see also: *Panorama Park Retirement Village v Commission for Conciliation, Mediation and Arbitration and others* [2020] ZALCJHB 8; (2020) 41 ILJ 1200 (LC); *Bhekani Abantu Services (Pty) Ltd v Redelinghuys and others* [2024] ZALCJHB 102; (2024) 45 ILJ 1242 (LC);.

expect aid from courts of law when they created the problem by disregarding the law. The Courts should not be hastened by law breakers and stretch the already limited resources to entertain these self-created urgent applications.

[21] A reasonable and law-abiding employer would take steps at the time of filing for a review, or shortly thereafter, to furnish security or attempt to reach an agreement with the employee to not proceed with execution, or file an application for exemption in the normal course. Such an application in the normal course, if prosecuted expeditiously, would be determined in a very short period of time, even if it is opposed.

[22] The disregard to section 145(7) and (8) of the LRA and the employers' contemptuous conduct must stop now. In the current applications, the applicants have asked the Court to set the amount of security it deems appropriate. In my view, this request has come a little bit too late. The applications must be struck from the roll for lack of urgency.

[23] This decision does not mark the end of the road for the applicants. The enforcement of the awards may still be stayed provided that the review applications remain active and pending before this Court, and if so, by furnishing security in terms of section 145(8), which requires a security of 24 months' remuneration.

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

Order

1. The applications are struck from the roll for lack of urgency.
2. There is no order as to costs.

M. Makhura
Judge of the Labour Court of South Africa

Appearances:

For the Applicants in both applications: Mr B.L. Roode

Instructed by: JVV Attorneys

For the 3rd Respondent in Pexmart: Mr T. Ngcana of APTU

LABOUR COURT