



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

CASE NO: 2025 – 077478

In the matter between:

MC SPARES AND REBUILDS (PTY) LTD

Applicant

and

SHEREZAAD CAJEE

First Respondent

MOTOR CITY AUTO SPARES (PTY) LTD

Second Respondent

Heard: 10 June 2025

Delivered: 25 June 2025

Summary: Application to stay execution of arbitration award pending rescission application at the Motor Industry Bargaining Council. Application dismissed.

JUDGMENT

DANIELS J

Introduction

[1] This is an application brought to stay the execution of an arbitration award, issued by a panellist of the Motor Industry Bargaining Council (“MIBCO”) pending the outcome of a rescission application. The facts are somewhat unusual given that the applicant is not the employer of the first respondent, and was not cited as her employer in the award. Accordingly, the relief obtained by the first respondent, through the arbitration award, is not relief granted against the applicant.

Urgency

[2] The applicant approached the court on an urgent basis, but allowed sufficient time for the filing of opposing papers by the respondents. The applicant set out the grounds of urgency, in detail, in its founding papers, which I see no reason to repeat. I accept that the applicant proceeded with expedition while taking appropriate steps to try to avoid litigation. Having considered the submissions, and the applicable principles,¹ I am satisfied that the applicant has made out its case for urgency.

Material facts

[3] The applicant states that the first respondent secured an arbitration award against two separate entities, namely Motor City Auto Spares (Pty) Ltd and Main Street Used Auto Spares (Pty) Ltd. It appears that, after the institution of the arbitration, at MIBCO, against Motor City Auto Spares, its business was transferred to Main Street Used Auto Spares as a going concern. Thus, Main Street Used Auto Spares was joined in the arbitration.

[4] The arbitration award, subsequently certified by the MIBCO, awarded to the first respondent an amount of R119 712, 93 which, in the main, relates to compensation for her unfair dismissal by the abovementioned entities. In terms of the award, no monies are to be paid by the applicant.

¹ See *East Rock Trading 7 (Pty) Ltd & another v Eagle Valley Granite (Pty) Ltd & others* [2011] ZAGPJHC 196; [2012] JOL 28244 (GSJ) at para [6]; *Jiba v Minister: Department of Justice & B Constitutional Development & others* (2010) 31 ILJ 112 (LC); *AMCU & others v Northam Platinum Ltd & another* (2016) 37 ILJ 2840 (LC) paras [20] to [26]

[5] The first respondent issued a writ of execution under which the Sheriff attached certain vehicles, as well as a bank account. The applicant alleges that the account belonged to it, and not the second respondent. The applicant also alleges that the vehicles belong to it, not the second respondent. The applicant instituted the necessary interpleader proceedings² in the magistrate's court. The account was released from attachment. The applicant alleges that the magistrate found there was no real difference between itself and the second respondent. Accordingly, the vehicles attached were not released from attachment. Strangely, no appeal was lodged in respect of the outcome of the interpleader process.

[6] The deponent to the founding affidavit, is the sole director and shareholder of the applicant. In the interpleader proceedings, the deponent revealed that, previously, she was also the director and owner of Motor City Auto Spares, former employer of the first respondent. At some point, the deponent alleges, she started a new business, the business of the applicant. She says that the business of the applicant has no relationship whatsoever with the business of Motor City Auto Spares or Main Street Used Spares. However, in her replying affidavit, the deponent concedes that the vehicles attached by the Sheriff were found at the premises where the first respondent previously worked.

[7] The applicant alleges that it has a material interest in the outcome of the arbitration, and it should therefore have been joined. However, as previously mentioned, the applicant maintains that it is not the employer of the first respondent, with no interest in the business that employed her. The applicant alleges that its interest (at arbitration) arose from the outcome of the interpleader process, with which it is unhappy.

[8] The applicant states that it filed both a rescission application at the MIBCO, as well as a review application in this court. However, in the notice of motion the applicant only seeks a stay pending the outcome of the rescission application.

² Interpleader proceedings may be brought inter alia when adverse claims are made by two or more persons to property which a third party, such as the Sheriff, has in his custody or possession.

Legal principles and analysis

[9] The requirements for a stay of execution, albeit in the context of a pending review application, were usefully and comprehensively set out in *Robor (Pty) Ltd (Tube Division) v Joubert & others (Robor)*:³

[10] The discretion to stay execution must be exercised judicially, but generally speaking a court will grant a stay of execution where real and substantial justice requires it or, put differently, where injustice would otherwise be done.

[11] The discretion is a wide one. It is founded on the court's power to control its own process. Grounds on which a court may choose to stay execution include that the underlying cause of action on which the judgment is based is under attack, and that execution is being sought for improper reasons. But these are not the only circumstances in which the court will exercise the power.

[12] In determining whether or not to exercise the discretion, the High Court has 'borrowed' from the requirements for the granting of interim interdicts. At the heart of the enquiry is whether the applicant has shown a well-grounded apprehension of execution taking place and of injustice being done to the applicant by way of irreparable harm being caused if execution were not suspended.

[16] There is no closed list of factors that may be relevant to the question whether the interests of justice require a stay of execution. But there are a number of other considerations, in addition to those raised by the applicant, that are frequently of importance in applications of this nature. These include:

³ (2009) 30 ILJ 2779 (LC)

16.1 Whether the attack on the underlying cause of action was brought in time, and whether its prospects of success are strong. This court's roll is regularly burdened with a large number of applications of this kind, brought on an urgent basis in the face of steps taken to execute an award, when the attack on the underlying award was brought out of time, or when the attack clearly has little or no prospects of success. The interests of justice will seldom warrant a stay in these circumstances.

16.2 The interest of all parties in securing finality. The dispute resolution system established by the Labour Relations Act provides parties with easily accessible remedies. In return, they must exercise their rights quickly. The time periods for doing so 30 days for a referral to conciliation in the case of most disputes, and 90 days thereafter for a referral to adjudication are considerably shorter than ordinary prescription periods. Speedy dispute resolution is a core to one of the LRA's primary objects, the effective resolution of labour disputes. This is one of the ways in which the LRA seeks to advance economic development, social justice and labour peace.

16.3 The cost to all parties of a delay in finality, and the cost to all parties of instituting or opposing further proceedings, whether in this court or elsewhere, to attack the underlying cause of action or to stay execution pending any such attack. Many applicants come to this court by way of urgent application, with counsel and attorneys briefed, in circumstances where the amount of the judgment debt is likely to be less than or, perhaps, little more than the cost of doing so. The position is far worse if one takes into account the overall cost of the attack on the underlying cause of action which is usually the basis of the application to stay. It is difficult to conceive what the commercial justification is for litigation of this kind, and one fears that all too often litigants are acting on inadequate or inappropriate legal advice.

16.4 The risk of injustice being done to the less powerful party to the dispute. The stronger financial position of most employers enables them to mount attacks on the underlying cause of action which the employee party is

frequently powerless to oppose or to expedite. This may lead to an outright abuse of the dispute resolution system.

[10] While *Robor* indicated that strong prospects of success are required in the attack on the underlying causa for the execution, this principle has not been universally followed. In *Rustenburg Local Municipality v SALGBC and others (Rustenburg)*⁴ the court indicated an applicant need only show, on a *prima facie* basis, that the pending review has some prospects of success. *Rustenburg* suggests that what is required is that the attack on the underlying causa, as pleaded, could be successful, when substantiated in due course. This apparent difference in approach need not be resolved by this judgment.

[11] What is clear is that the court exercises a wide discretion. The discretion must be exercised judicially and all the relevant factors must be considered. I have considered all the relevant factors, as pleaded and raised during argument however I wish to highlight some of them. I considered the first respondent's interest in the finality of the dispute, which began in 2019. In my view, any further delays in the finalisation of the proceedings will bring the dispute resolution process into disrepute. I considered that the first respondent is not legally represented, being unable to afford such, and she may be further prejudiced. I considered that the applicant has not appealed against the outcome of the interpleader process though this is its true cause of complaint (nor has it explained this glaring omission). I considered that the award orders payment from the second respondent, not the applicant. I considered that the applicant has no prospects of success in its rescission application, even on a *prima facie* basis. The simple reason for this is that the applicant has no locus standi to seek rescission. There was no need for the applicant to be cited in the arbitration, if it was not the employer. Where an applicant for a stay of execution has no prospects of success in its attack of the underlying causa (for the execution) it cannot be in the interests of justice to stay the execution. On the contrary, if a stay of execution were granted, it is the first respondent who would suffer a grave injustice. In my view, based on the facts disclosed to the court, the applicant seeks to frustrate

⁴ [2017] 11 BLLR 1161 (LC) at para 28

the finalisation of the dispute. This improper motive must count against the grant of interim relief.

[12] For the reasons set out above, it is not in the interests of justice to stay the execution of the award, and the writ of execution granted in consequence the award. The application falls to be dismissed.

[13] In the results the following order is made:

Order

1. The application is dismissed,
2. There is no order as to costs.

R Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv AJ Nel

Instructed by: GGD Attorneys

For the First Respondent:

Self-Represented