



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

CASE NO: 2025 – 085855

In the matter between:

TRANSPORT & ALLIED WORKERS UNION OF SA Applicant

and

DORIS LOUW WILLIAMS First Respondent

SHERIFF OF THE COURT – JOHANNESBURG CENTRAL Second Respondent

Heard: 10 June 2025

Delivered: 27 June 2025

Summary: Application to stay execution of arbitration award pending review application. Application dismissed.

JUDGMENT

DANIELS J

Introduction

[1] This is an application brought to stay the execution of an arbitration award pending the outcome of a review application filed in this court under case number 082851/25. The review was not attached to the application.

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 first respondent was employed by the applicant; a trade union named the Transport and Allied Workers Union of South Africa ("TAWUSA").

[4] The first respondent believing she had been dismissed unfairly by TAWUSA and, on 10 August 2023, referred a dispute disputing the fairness of her dismissal to the Commission for Conciliation, Mediation and Arbitration ("CCMA").

[5] After the failure of conciliation, the matter was scheduled for arbitration, on 25 September 2024. Two days earlier, the applicant sent an email to the CCMA advising it that the dispute must be removed from the arbitration roll because TAWUSA had been deregistered. It is unclear if the CCMA responded. However, what is clear is that the CCMA did not remove the matter from the arbitration roll and

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]

TAWUSA did not arrive for the hearing. The commissioner issued an arbitration award in default.

[6] In the arbitration award, issued on or about 5 October 2024, the commissioner found that the first respondent had been dismissed, and the dismissal was unfair. The commissioner ordered TAWUSA to reinstate the first respondent and pay her backpay in the sum of R142 309, 48. The arbitration award was subsequently certified by the first respondent.

[7] The first respondent issued a writ of execution and instructed the Sheriff to attach the bank account of the applicant, which he duly did. This occasioned the urgent proceedings to stay the execution of the award.

[8] At the time of the arbitration hearing, the applicant was indeed deregistered. TAWUSA was deregistered during late 2023. Thereafter, it brought an application to stay deregistration pending the outcome of its appeal in terms of section 111 of the Labour Relations Act No. 66 of 1995 ("LRA"). The application came before Judge Prinsloo who granted it a *rule nisi*. On the return date, Notshe AJ heard the application and thereafter discharged the interim order during July or August 2024. TAWUSA applied for leave to appeal, which was dismissed. Thereafter, it petitioned the Labour Appeal Court ("LAC"). The petition was granted. On or about 21 May 2025, the LAC set aside the judgment of the court *a quo* and suspended the deregistration pending the outcome of the appeal.

Legal principles and analysis

[9] The applicant contends that it has prospects of success in its review application because it informed the CCMA that it had been deregistered and the arbitration proceeded, nonetheless. More importantly, the applicant contends, by reference to section 106(3) of the LRA, that a deregistered trade union has no rights of appearance and therefore could not defend itself at the CCMA. The applicant further contends that no action could be taken against it because it was deregistered.

Unfortunately, the applicant misconceives the import of sections 106(3) and 138(5) of the LRA.

[10] Section 106(3) reads: “*When a trade union’s or employer’s organisation’s registration is cancelled, all the rights it enjoyed as a result of being registered will end.*” The section only terminates those rights of the trade union - which it enjoyed because of registration. This relates, for example, to rights such as organizational rights secured through the operation of section 21 of the LRA. The section does not dissolve the trade union or deprive it of legal personality. This was explained in *National Entitled Workers Union v CCMA & others*:²

“The other important principle from the *CCMA* case, which has not been stated in so many words, is that the deregistration of a trade union does not dissolve that union as a voluntary association. This means a deregistered trade union is entitled to continue its existence in terms of the right to freedom of association. A deregistered trade union does, however, lose certain rights accorded to it by virtue of registration in terms of the LRA.”

(own emphasis)

[11] Voluntary associations, governed by their constitutions, have legal personality where their constitutions grant this to them. Legal personality grants the association the right to institute and defend legal proceedings against them. As Kentridge AJ explained in *S v Coetzee and others*³

“In South African law, unlike English law, no Act of Parliament or of the executive is necessary to bring an artificial legal entity into being. A number of persons may combine together to form an association with a constitution which gives the association the power to hold property separately from its members, and the capacity to sue and be sued in its own name. If such a constitution is adopted, and if the objects of the association are lawful, the association becomes a body corporate or *universitas*. In this way sporting bodies or charities or unregistered trade unions, to take some examples at

² (2011) 32 ILJ 374 (LC) at para 11

³ 1997 (3) SA 527 (CC) at para 104

random, can be brought into being and endowed with separate legal personality.”

(own emphasis)

[12] Section 138(5) of the LRA, read with Rules 25(1)(b) of the Rules of the CCMA, entitle any party to arbitration proceedings to appear “in person”. The applicant was a party and entitled to appear in person. TAWUSA would have attended as an employer, not as a union representing its members. This distinction was lost on it.

[13] 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)*:⁴

[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.

⁴ (2009) 30 ILJ 2779 (LC)

[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:

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.

[14] 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)*⁵ 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.

[15] 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. In my considered view, further delays in the finalisation of the proceedings will bring the dispute resolution process into disrepute. I considered that the applicant has no prospects of success in its review, even on a *prima facie* basis. The simple reason is that the applicant had the right, and the duty, to attend the arbitration. Its failure to attend entitled the commissioner to make a finding based solely on the version of the first respondent. Where an applicant who seeks 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.

⁵ [2017] 11 BLLR 1161 (LC) at para 28

[16] 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.

[17] 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 T Malungani

Instructed by: Msiza & Co. Attorneys

For the First Respondent:

Self-Represented