



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2024-134302

In the matter between:

REGENESYS MANAGEMENT (PTY) LTD
t/a REGENESYS

Applicant

and

SUSARA MARIA NORTJE

First Respondent

MARIA ANTONIA OLIVEIRA DOS SANTOS

Second Respondent

BETH MANN

Third Respondent

STACEY- LEIGH CHALKLEN

Fourth Respondent

Heard: 28 November 2024

Delivered: 19 June 2025

JUDGMENT

PHEHANE, J

Introduction

[1] This is an application for urgent relief wherein the applicant seeks an order staying the writ of execution issued under case numbers J1824/2015 and JS 776/2015 dated 22 October 2024, pending the outcome of the applicant's application instituted in this Court on 15 November 2024 for declaratory relief.¹

[2] The application is opposed by the respondents.

Relevant background

[3] The background is largely common cause. It follows below.

[4] Pursuant to trial proceedings relating to dismissal of the respondents and further former employees of the applicant for operational requirements, on 27 February 2020, this Court handed down a judgment ordering the applicant to pay compensation to the respondents before this Court.²

[5] On 18 July 2022, the Labour Appeal Court (LAC) overtuned the compensation orders of the Court *a quo* following a finding on procedural unfairness in respect of the first, second and fourth respondents, as the LAC held that this Court lacked jurisdiction to adjudicate disputes on procedural unfairness in disputes in terms of section 189A of the Labour Relations Act³ (LRA). These three respondents were reinstated. The LAC did not overturn the Court *a quo*'s compensation order in respect of the second respondent, as her dismissal was found to be both procedurally and substantively fair.

¹ See: notice of motion, p 001-3 on Caselines.

² Applicant's heads of argument at para 4 and its sub-paragraphs on p 005-3 to 005-4 on Caselines.

³ Act 66 of 1995, as amended.

[6] On 8 August 2022, the applicant appealed against the judgment of the LAC in respect of the three respondents that the Court *a quo* had ordered must be reinstated.

[7] On 28 August 2022, the three respondents delivered a cross-appeal against the LAC judgment that set aside their compensation.

[8] In a judgment of 24 May 2024, the Constitutional Court handed down an order reinstating the order of the Court *a quo* in respect of the respondents, save the sixth and ninth respondents in that dispute, as they were not parties before the apex Court. The total award of compensation to the respondents was R1 770 737,40.

[9] On 26 June 2024, the applicant paid R900 000,00 and R870 737,40 on 27 June 2024 to the respondent's attorney of record. These amounts comprise the capital amount of the judgment debt.

[10] On 19 September 2024, the respondent's attorney of record served the applicant's attorney with a writ of execution in terms of accrued interest from the date of the Court *a quo*'s judgment, that is, 27 February 2020, to the date of payment of the capital amount on 27 June 2024.

[11] On 27 September 2024, during a telephonic discussion between the parties' attorneys, the applicant's attorney informed the respondent's attorney that the applicant would institute urgent court proceedings to set aside the writ of execution, as there are conflicting judgments on the calculation and rate of interest.

[12] Pursuant to providing the respondent's attorneys with the conflicting judgments on the calculation of interest, on 29 September 2024, the applicant's attorney sought an undertaking that the writ would be withdrawn, failing which an urgent application would be launched to set it aside.

[13] Correspondence ensued between the parties in early October 2024 relating to the applicable rate of interest. The applicant's attorney proposed that the parties file a stated case in terms of Rule 19. This proposal came to nought, and on 15 October

2024, the respondent's attorneys advised that a writ would be issued at a fixed interest rate. Several correspondence was exchanged between the parties, and the parties could not find each other in resolving the issue. On 18 October 2024, the respondent's attorney informed the applicant's attorney that it would proceed with the writ of execution.

[14] On 8 November 2024, the respondent's attorney sent a *newly* issued writ dated 22 October 2024, calculated at a fixed interest rate of 10% per annum and sent to the applicant's attorney on 11 November 2024, a statement of the interest calculations.

[15] On 15 November 2024, the applicant delivered an application for declaratory relief.⁴ The Respondent was adamant, despite the application for declaratory relief being launched, to proceed with the writ of execution and informed the applicant's attorney. The reason for this stance by the respondent, it seems, was due to the failure of the applicant to launch an application to stay the writ of execution.⁵ This urgent application was subsequently instituted by the applicant on 19 November 2024 to stay the writ of execution pending the application for declaratory relief.

Urgency

[16] Rule 38(2) of the Rules⁶ provide that an affidavit in support of an urgent application must contain the following:

- '(a) the reasons for urgency and why urgent relief is necessary; and
- (b) the reasons why the requirements of the rules were not complied with, if that is the case...'

[17] The applicant avers that from the date when the initial writ was issued, that is, 18 July 2024, which was dispensed with, and the series of engagements between

⁴ The relief sought in the declaratory order is set out in paragraph 25 of the applicant's heads of argument and its subparagraphs, on p 005-7 to 005-8 on Caselines.

⁵ See: email by respondent's attorneys dated 18 November 2024 at p 002-158 on Caselines.

⁶ Rules Regulating the Conduct of the Proceedings of the Labour Court published under GN4775a in GG 50608 of 3 May 2024.

the parties which resulted in the new writ and ultimately, the application for a declarator being issued, it acted proactively in engaging with the respondent regarding the calculation of interest, the conflicting judgments and the respective parties' divergent views in this regard. Further, it attempted to find an expeditious resolution to the underlying *causa* by proposing that the parties file a stated case in terms of Rule 19 for adjudication, to no avail.

(c) The applicant avers that, should urgent relief not be granted, and the respondents succeed in attaching its goods and selling them in execution, the applicant may encounter difficulty, if it succeeds in the declarator, on recovering monies paid to the respondents on the incorrect calculation of interest.

[18] The respondents admit that the parties had been engaging to attempt to reach an agreement on the calculation of interest; however, they contend that urgency is self-created, as the applicant stated that it would launch urgent proceedings as early as 27 September 2024, but did not. In addition, the new writ was issued on 22 October 2024, but this application was only launched on 20 November 2024.

[19] The timeline leading up to the launch of this application is self-explanatory and not disputed. The parties engaged with each other to attempt to reach an agreement on the calculation of interest payable. The respondent indicated in correspondence of 15 October 2024, that a new writ would be issued at the calculation of interest at 10% per annum. This writ was issued on 22 October 2024, but only served on the applicant's attorney on 8 November 2024, following an enquiry by the applicant's attorney on the same date. Further, the statement of the calculations was presented to the applicant's attorneys on 11 November 2024. It was only after considering this statement that the applicant launched a declarator, and despite this application, the respondent communicated on 18 November 2024 that they would, nonetheless, proceed to enforce the writ of execution. This application was launched on the following day.

[20] I am satisfied that the applicant approached this Court without delay for urgent relief. I am also satisfied that, given the stance of the respondents, urgent relief is

necessary and the applicant will not obtain substantial relief should this application be heard in the normal course.⁷

[21] In the premises, the application is heard as urgent.

Argument

Stay of writ

[22] The applicant submits that the underlying *causa* is factual disputes between the parties in respect of the calculation of interest, and therefore, the amount of interest payable by the applicant exists. The applicant contends that there exists an underlying *causa* that is not in dispute, as the respondents record as follows in paragraph 17 of their answering affidavit:⁸

'17. The legal teams on behalf of [the applicant] and the Respondents have been engaging each other to try and reach agreement on the interest to be paid, more particularly:

17.1 whether interest should be calculated at a variable monthly rate or at a fixed rate, being the rate that prevailed as at the time of judgement, and

17.2 whether the interest should start running from the date as ordered by the Labour Court's judgment, being 15 April 2020, until payment was made or whether, if it has started running from that date, with a no interest is payable in respect of the period between the LAC judgment and the Constitutional Court's judgment'.

[23] In view of the respondent's stance as indicated on 18 November 2024 that they would proceed to enforce the writ of execution notwithstanding the applicant's launch of the application for declaratory relief, the applicant contends that there exists a well-grounded apprehension that execution is taking place.⁹

⁷ *Vumatel (Pty) Ltd v Majra and Others* (2018) 39 ILJ 2771 (LC) at paras [7] to [8].

⁸ Caselines at pp 003-21 to 003-22.

⁹ When judgment was reserved, the parties indicated that the Sheriff had been instructed to stay the execution of the writ pending this Court's judgment in this application.

[24] The applicant relies on the case of *Emalahleni Local Municipality v Phooko NO and Others*¹⁰ (*Phooko*) for the principle that the demonstration of the existence of an underlying *causa*, and not the merits or demerits of the underlying dispute, entitles the applicant to relief of the grant of the stay of execution.

[25] In *Phooko*,¹¹ this Court stated as follows regarding the grant of the stay in execution in the context of an application to review and set aside an arbitration award in terms of the provisions of section 145 of the LRA:

‘For very obvious reasons, there is no requirement to furnish security or to be absolved before a stay may be granted. The judgment accepts and appreciates an existence of an underlying dispute, which in my view is a review application. However, of importance is its existence and not the merits or demerits of the underlying dispute before a stay may be granted. Having traversed the authorities, I take a view that once a party satisfies the requirements spelled out above a stay must happen irrespective of whether a party has symbiotically sought to be absolved from the furnishing of security.’

[26] The applicant concludes that it has made out a case for the stay of execution in terms of the general principles set out in *Tony Gois t/a Shakespeare’s Pub v van Zyl and Others*¹² (*Shakespeare’s Pub*).

[27] It is pertinent to set out what these general principles are, as stated in *Shakespeare’s Pub*, they are summarised as follows:¹³

- (a) a court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result;
- (b) the court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right but attempting to avert injustice;
- (c) the court must be satisfied that:

¹⁰ [2021] 9 BLLR 941 (LC).

¹¹ At para [17].

¹² [2023] 11 BLLR 1176 (LC). See: Applicant’s heads of argument at para 35.

¹³ *Shakespeare’s Pub supra* at para [37].

- (i) the applicant has well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and
- (ii) irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right;
- (d) irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed ie where the underlying *causa* is the subject matter of an ongoing dispute between the parties;
- (e) the court is not concerned with the merits of the underlying dispute – the sole enquiry is simply whether the *causa* is in dispute.’

[28] The respondents contend that the applicant is unnecessarily delaying the finalisation of their claims by launching a declarator application and this application.¹⁴ However, the respondents state that there exists a *legal dispute*.¹⁵ In the same breath, the respondents submit that the law on interest of judgments debts is clear.¹⁶

[29] The respondents explain the legal dispute as being the divergent views the parties take on the calculation of interest. The applicant’s legal position is premised on case law relating to arbitration awards, while the respondent’s legal position is premised on case law dealing with judgments.¹⁷ The respondents thus submit that instead of bringing an application to stay the writ or to set it aside on the basis of the legal position adopted by the applicant, it elected to bring a declarator alleging that the legal issues are novel and disputes of fact exist.

[30] The respondents contend that the applicant avoided simply bringing an application to set aside the writ, as that dispute would be disposed of sooner than a declarator, which is likely to be a protracted legal dispute resulting in increased legal expenses.

[31] The respondents thus submit that, in determining whether or not to grant the stay of execution, it should consider whether the applicant has reasonable prospects of success in the declaratory application.

¹⁴ Respondents’ heads of argument at para 5 on p 006-3 on Caselines.

¹⁵ *Ibid* at para 10, on p 006-4 on Caselines.

¹⁶ *Ibid* at para 53 on p 001-16 on Caselines.

¹⁷ *Ibid* at para 21 on p 006-6 on Caselines.

Interim interdict

Prima facie right and the balance of convenience:

[32] The applicant avers that it has a *prima facie* right to certainty on the calculation of interest whether it be calculated from the date of the judgment of the Court *a quo* and submits that the LAC order setting aside the order *a quo* remained extant until the LAC decision was overtuned by the Constitutional Court on 21 May 2024. Therefore, the applicant should not be required to pay interest for a period where the extent of its liability has not yet been established.

[33] The applicant relies on the decision in *Olympic Passenger Service (Pty) Ltd v Ramlagan*¹⁸, where the Court stated as follows in relation to the inter-relationship between the requirement of a *prima facie* right and the balance of convenience:

‘The expression “*prima facie* established the open to some doubt” seems to me a brilliantly apt classification of these cases. In such cases, upon proof of a well grounded apprehension of irreparable harm, and there being no adequate ordinary remedy, the Court may grant an interdict - it has a discretion, to be exercised judicially upon a consideration of all the facts. Usually this will resolve itself into a nice consideration of the prospects of success and the balance of convenience - the stronger the prospects of success, the less need for such balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him. I need hardly add that by balance of convenience is meant the prejudice to the applicant if the interdict be refused, weighed against the prejudice to the respondent if it be granted.’

Irreparable harm:

¹⁸ 1957 (2) SA 382 (D) at 383 D-F.

[34] The applicant avers that the irreparable harm that would be suffered by it would entail difficulties it would encounter in recouping the monies paid over to the respondents were the applicant to succeed in its declarator application.

No alternative remedy:

[35] The applicant submits that it has no alternative remedy but to pursue the relief in this application, as the undertakings it sought from the respondents to withdraw the writ or to agree to a proposal to file a stated case were futile.

[36] The respondents contend that the applicant has failed to make out a case for interim relief. Should interim relief be granted, the respondents would suffer prejudice and injustice through years of continued litigation. Further, the applicant must be held to its obligations in terms of the judgment by the Court *a quo*.

Evaluation

[37] Section 158(1) of the LRA empowers this Court to grant urgent interim interdictory relief.

[38] The requirements to succeed in the grant of interim relief are trite.

[39] In determining whether or not to grant the stay of a writ of execution, the applicant must demonstrate an underlying *causa* and must demonstrate that it will suffer an injustice should the stay not be granted.

[40] The decision in *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another and a Similar Matter*¹⁹ (BP), quoted extensively in the respondents' heads of argument, in essence, takes into account the factors that the Court in *Shakespeare's Pub* assessed in considering whether or not to grant a stay of execution and summarised the position as follows:

¹⁹ 2022 (1) SA 162 (GJ).

- a. the general rule is that the Court will grant a stay of execution where the real and substantial justice requires such a stay;
- b. in determining whether to grant the stay of execution, the court has a discretion to be exercised judicially and must take into account the following:
 - i. the requirements for the grant of an interim interdict;
 - ii. an evaluation of the prospects of success in appropriate circumstances to determine if an injustice would occur if the stay is not granted;
 - iii. the potentiality of irreparable harm to the applicant if the execution was not stayed;
 - iv. the potentiality of irreparable harm to the respondent if the execution were granted;
 - v. the possibility that the underlying cause may ultimately be removed.

[41] The underlying *causa* for the writ of execution is the calculation of the payment of interest, as the parties hold divergent views and rely on various judgments for their views. There is a possibility that the underlying *causa* may be removed in the declaratory application. The applicant has demonstrated that it will suffer irreparable harm if the writ is not stayed, as it will encounter difficulties in recouping monies paid to the respondents, premised on the respondent's calculations of interest should it succeed in the declarator. In my view, the applicant is not refusing to pay the interest – it wants certainty on the correct calculation of interest. An injustice would be done to the applicant if it were to pay the respondents interest, where ultimately the calculations may have been incorrect. The applicant has demonstrated that it has a *prima facie* right, and the balance of convenience is in its favour.

[42] The respondent has stated on several occasions that the applicant ought to have launched proceedings to stay the writ. This is what the applicant has done, and it has demonstrated that it should succeed in this application, borrowing from the requirements for the grant of interim interdictory relief. To borrow the words quoted in the *BP* decision²⁰, by launching this application, the applicant is, in my view, not

²⁰ *Ibid* at para [27].

asserting a right in the strict sense but is asserting a discretionary indulgence based on the apprehension of an injustice.

Costs

[43] The parties' divergent views on the calculation of interest are not disputed. The respondents held the view that the applicant ought to have launched an application to stay or set aside the writ of execution, yet they refused to give an undertaking to withdraw the writ and have opposed this application. The respondents' assertions that the applicant has launched this application to frustrate the finalisation of their claim are without merit. The parties engaged in a series of correspondence and communication to attempt to resolve the dispute. The declarator can hardly be said to have the intention to frustrate the respondents. The respondents' gesture at the conclusion of argument that the Sheriff is placed on hold in terms of execution ought to have been given at the outset – had this been the case, this application would not have been launched. The applicant had therefore incurred costs in bringing this application.

[44] Section 162(2) of the LRA makes provision for an order for the payment of costs, and in making its decision, this Court must consider the conduct of the parties in proceeding with or defending the matter before the Court.

[45] The conduct of the respondents in the manner in which they have conducted themselves in defending this application, as set out above, warrants an order that they be issued with an order to pay the costs of this application.

[46] In view of the foregoing, the following order is made:

Order

1. The application is heard as urgent in terms of Rule 38.
2. The writ of execution under case number J1824/2015 and JS 776/2015 is stayed pending the finalisation of the application launched by the applicant for declaratory relief.

3. The respondents are to pay the costs of the application jointly and severally, the one paying and the other to be absolved.

M. T. M. Pehane

Judge of the Labour Court of South Africa

Appearances:

For the applicant: Adv Fourie SC
Instructed by: Higgs Attorneys INC

For the respondents: Adv Erasmus SC (Ms)
Instructed by: Du Randt Du Toit Pelser Attorneys