



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025 - 114793

In the matter between:

DOT OFFICE SUPPLIES (PTY) LTD

Applicant

and

LEBELO, BADROONISHA

First Respondent

PETERS, MANDY

Second Respondent

NADS DISTRIBUTORS CC

Third Respondent

Heard: 23 July 2025

Delivered: 28 July 2025

Summary: Application to declare judgment executable in terms of section 18 of the Superior Courts Act No. 10 of 2013. Requirements not met. Application dismissed.

JUDGMENT

DANIELS J

Introduction

[1] This is an application brought on an urgent basis, to declare that an earlier judgment and order of this court be made immediately executable, despite the pending application for leave to appeal. This court must decide the application in terms of section 18(1) of the Superior Courts Act No. 10 of 2013 (“SCA Act”) read in the context of its jurisdiction and powers under sections 157 and 158 of the Labour Relations Act No. 66 of 1995 (“LRA”).

Material facts

[2] The business of the applicant is the sale and distribution of office stationary and related office supplies and equipment. The industry is an intensive and competitive one, where customer relationships are of critical importance.

[3] The first respondent was engaged, by the applicant, as a senior sales executive, on a basic salary of R10 000, 00. Her duties there were to procure sales from existing and new customers of the applicant. Just eleven months after being employed by the applicant, the first respondent terminated her employment by resigning, without notice, on 7 January 2025. In terms of first respondent’s employment contract, however, her employment terminated on 31 January 2025.

[4] It is common cause that the first respondent was subject to a restraint of trade (“restraint”) and a confidentiality agreement which she had concluded with the applicant. The restraint contained a provision that prohibited the first respondent from being employed by any competitor of the applicant, for a period of 12 months after the termination of her employment, within a distance of 150 kms from the applicant’s premises in Midrand, Gauteng.

[5] Immediately after her resignation, first respondent took up employment with the third respondent, a competitor of the applicant. Interestingly, the first

respondent's remuneration was not increased, or not increased significantly, with this change of employer.

[6] The applicant brought an urgent application to give effect to the restraint, which matter was set down on 7 May 2025, before the learned acting judge Nhlapo AJ. The acting judge found in favour of the applicant in a judgment and order issued on 27 June 2025. The court ordered that the restraint be enforced for period of 12 months, starting on 31 January 2025.

[7] I was informed that a settlement proposal had been made, by the first respondent, to the effect that the third respondent would move her to its department dealing with the sale of medical equipment. Unfortunately, the applicant rejected the proposal.

[8] On 3 July 2025, the applicant sent a letter to the third respondent demanding compliance with the judgment and order issued on 27 June. The applicant demanded that the third respondent terminate the services of the first respondent. This prompted the first respondent to file an application for leave to appeal (albeit that the application was not pursued on an urgent basis) and the applicant to file this application.

[9] It is apparent from the papers that the first respondent supports three children, one of whom is a minor. The first respondent states that she has no experience apart from the stationary industry, though, plainly, she has some experience in sales generally.

[10] Both parties agreed that the effect of the judgment and order issued on 27 June, is that the third respondent must terminate the services of the first respondent. The first respondent states that this will likely lead to her unemployment for several months, and possibly longer. This will impact on the first respondent's ability to support her three children. It is probable that the first respondent will be forced to relocate, to be closer to her new employer, located at least 150 kms from Midrand, Gauteng.

Urgency

[11] The legal principles relating to urgency are trite, and need not be rehearsed.¹ In the exercise of my wide discretion on this issue, I propose to consider the application on an urgent basis. In this regard, I note that the application to enforce the restraint was heard on an urgent basis, the restraint will be enforced for no more than six months (until the end of January 2026) and the applicant has at all material times pursued this litigation efficiently and diligently.

Legal Principles

[12] In an application to declare a judgment (pending an appeal) to be executable, in terms of section 18(1) of the SCA Act, the applicant faces a heavy burden. The applicant must show “exceptional circumstances”, but it must also show the presence of irreparable harm to itself, and the absence of irreparable harm to the respondent.²

[13] While the meaning of the term “exceptional circumstances” in the context of section 18(1) is not capable of an easy or neat definition, it may be understood as “*indicative of something unusual, extraordinary, remarkable, peculiar or simply different.*”³ There may be varying degrees of exceptionality, peculiarity or difference. Whether the requirement is met will depend on the context, the facts, and the circumstances of each case.

¹ *Jiba v Minister: Department of Justice and Constitutional Development and Other* (2010) 31 ILJ 112 (LC) at para 18; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and others* [2012] JOL 28244 (GSJ) at para 6; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* (081473/2023) [2023] ZAGPPHC 709 at para 18; *Public Servants Association of SA and Another v Minister of Home Affairs and Others* [2016] ZALCJHB 439 at paras 12 to 18; *Moyane v Ramaphosa and Others* [2019] 1 All SA 718 (GP) at para 33; *AMCU & others v Northam Platinum Ltd & another* (2016) 37 ILJ 2840 (LC) at para 26

² *Incubeta Holdings (Pty) Ltd v Ellis and another* 2014 (3) SA 189 (GJ)

³ *S v Liesching* 2019 (4) SA 219 (CC)

[14] In *Tyte Security Services CC v Western Cape Provincial Government and others*⁴ the Supreme Court of Appeal held, in relation to the test for irreparable harm as contemplated by section 18(3), that irreparable harm is “*always dependent upon the factual situation in which the dispute arises, and upon the legal principles that govern the rights and obligations of the parties in the context of that dispute*”. The exceptional circumstances is likely to be linked to the harm which the applicant may suffer if the order is not implemented immediately. The presence or absence of irreparable harm is not a completely separate enquiry from the exceptional circumstances enquiry.

[15] However, of significance, our courts have held that where an applicant is unable to show that the respondent will not suffer irreparable harm, that is fatal to its application.⁵

Analysis

[16] I do not believe that the applicant has satisfied the statutory criteria in section 18(1) or 18(3); however it is only necessary for me to address the alleged absence of irreparable harm to the first respondent.

[17] It is common cause that the first respondent earns a relatively low salary with the third respondent. Her remuneration falls well below the threshold used to identify “vulnerable employees” in section 6(3) of the Basic Conditions of Employment Act No. 75 of 1997.⁶

[18] It is clear that the first respondent’s work experience is limited, largely, to the stationary industry. The applicant did not demonstrate that her skills, and experience, in the sale of stationary or office supplies, are transferrable to the sales of any other goods or merchandise. Thus, on a balance of probabilities, I accept that the first respondent may be unemployed for several months, or

⁴ 2024 (6) SA 175 (SCA) at para [13]

⁵ *Knoop NO and another v Gupta (Execution)* 2021 (3) SA 135 (SCA) at para [48]

⁶ The annual threshold is R261 748,45 (Two hundred and sixty-one thousand, and seven hundred and forty-eight rand, forty-five cents). See *GN R5970 GG 52232* dated 7 March 2025

perhaps longer, if the restraint is immediately implemented. There can be little doubt that unemployment, whether for a period of several months or longer, with the resulting emotional and financial consequences, will occasion irreparable harm to the first respondent, and her dependents. Furthermore, the likely impact, of the immediate enforcement of the restraint, will be that the first respondent must relocate to a new city or town, which will result in irreparable harm to the first respondent, and her dependents.

[19] In the circumstances, the applicant has failed to show, on a balance of probabilities, that the immediate implementation of the judgment and order of 27 June will not occasion irreparable harm to the first respondent. On this basis alone, the application must fail. Insofar as irreparable harm is related to the exceptional circumstances enquiry, the applicant also fails on that requirement.

Costs

[20] The applicant seeks to vindicate its rights and it has not acted unreasonably. In the circumstances, I see no reason in law or fairness to mulct the applicant in costs.

Conclusion

[21] In the circumstances, the application is dismissed. There is no order as to costs.

RN Daniels

Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Ms C Bouwer

Snyman Attorneys

For the First Respondent:

Adv M Moola

Instructed by ST Attorneys

LABOUR COURT