



THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

Case No:2025-103592

In the matter between:

NGQUSHWA LOCAL MUNICIPALITY

Applicant

and

SAMWU obo B MANGESI

First Respondent

NTOMBEKHAYA SESANI N.O.

Second Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

Third Respondent

SHERIFF OF THE COURT, PEDDIE

Fourth Respondent

Heard: 25 July 2025

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 11h00 on 29 July 2025.

Summary: application to stay enforcement of award and to furnish lesser security provided for in section 145 (8) – urgency proven – sufficient reasons provided for lesser amount of security – application granted and enforcement suspended pending finalisation of the review proceedings.

JUDGMENT

DE KOCK, AJ

Introduction

[1] This matter came before the court as an urgent application to stay the enforcement of the arbitration award and for the court to accept the applicant's security furnished, which is for an amount that is less than what is required in section 145 (8) of the Labour Relations Act¹ (LRA).

Background to application

[2] The second respondent, on 13 May 2025, issued an arbitration award wherein the first respondent was reinstated with effect from 26 May 2025, and the applicant was ordered to pay the first respondent backpay in the amount of R700 152.00 on or before 23 May 2025. The applicant delivered an application for the award to be reviewed on 20 May 2025, which was delivered within the prescribed six week period.

[3] Included in the founding affidavit in support of the application to review the award, the applicant states that they will be seeking an order to stay the enforcement of the award pending the determination of the review application. More specifically, the

¹ No. 66 of 1995.

applicant states that they will seek an order in terms of section 145 (8) (b) of the LRA permitting it to furnish security in the amount of R150 000.00, which is less than 24 months of the first respondent's remuneration, as required by section 148 (8). The reasons for the request were set out in detail in the affidavit.

[4] On 18 June 2025 the applicant was served with a certified award. According to the applicant, the certified award entitled the first respondent to enforce the award. The applicant, on 12 June 2025, served an amended notice of motion which included a prayer permitting reduced security in the amount of R150 000.00. On 19 June 2025 the applicant served and filed a bond of security in the amount of R150 000.00. On 19 June 2025, the applicant's attorneys sent a letter to the first respondent's attorneys advising that it has served and filed a bond of security. A written undertaking was requested that the first respondent would not execute on the certification. The undertaking was requested to be given within seven days.

[5] The seven day period expired on 30 June 2025 with no undertaking provided. Instead, the applicant's attorney was told that if the applicant wished to prevent execution it is "*at liberty to approach the court on an urgent basis for appropriate relief.*" This then led to the urgent application being delivered by the applicant on 2 July 2025, providing sufficient time for the further delivery of the answering and replying affidavits before the application was to be heard in court on 25 July 2025.

Urgency

[6] The court is satisfied that the application is indeed urgent given the background events that led to the application being delivered on 2 July 2025. The applicant foreshadowed the need to apply for a stay of the enforcement of the award in the review application. The applicant also set out in the founding affidavit in the review application that they will seek exemption from compliance with section 145 (8) based on clear reasons stated therein. The applicant also furnished security in the amount of R150 000.00, which the applicant believed to be an amount that can be furnished as

security without affecting the operations of the municipality. The applicant also prosecuted the review application well within the prescribed period of six weeks.

[7] The applicant's actions in the way they anticipated the need to ask for a stay and the need to seek an exemption from the security to be furnished in terms of section 145 (8) are commended by this court. The way the applicant foreshadowed and made provision for a possible urgent application as and when the need should arise is a prime example of what is expected of litigants who approach this court with similar applications, i.e., to anticipate seeking such relief from the onset in the review application.

[8] The question that then must be answered is when did the need arise to approach the court with an urgent application. The applicant was correct in not approaching this court with an urgent application until such time that it became apparent to them that the first respondent would, notwithstanding the timeous delivery of the review application, and despite the provision of security *albeit* at a lesser amount than is required in section 145 (8), pursue the enforcement of the award. The urgency in this application was created when the first respondent's attorney, when asked to give an undertaking, responded that the undertaking would not be given and that the applicant is at liberty to approach the court on an urgent basis for appropriate relief. The urgency was therefore not self-created, and the applicant had no other alternative remedy to prevent the enforcement of the award by approaching this court on an urgent basis. The court is therefore satisfied that the application is urgent.

Application to stay

[9] There is no reason why this court should not grant the application for the award to be stayed. The applicant prosecuted the review application well within the prescribed period and there is no indication whatsoever that the applicant has brought review proceedings to frustrate the enforcement of the award. The applicant's prospects of success in the review application are irrelevant in this application to stay the award.

[10] The applicant further, unlike many other similar cases that come before this court, foreshadowed the need to ask for a stay of the enforcement of the award. The reasons why a stay would be required were already dealt with in the founding affidavit delivered in the review application. The applicant will be severely prejudiced, especially given the way the applicant had dealt with this matter thus far, should the award not be stayed. A failure to stay the enforcement of the award will lead to the applicant's assets being attached and sold potentially at a cost much lower than its current value. The applicant's obligation to deliver a service to its residents will also be severely impacted and the applicant will suffer irreparable harm if the enforcement of the award is not stayed. It is for reasons such as this that section 145 (7) and (8) provide a means by which the enforcement of an award can be stayed. The applicant furnished security from the onset, *albeit* at a lesser amount than required in section 145 (8).

[11] The applicant did not just decide on an amount and deemed that to be sufficient. The applicant conducted a thorough investigation as to the amount that they can afford to furnish as security, and they furnished such security. The applicant knew that they required exemption from this court by providing an amount less than prescribed in section 145 (8), and they dealt with the reasons why they require an exemption in the review application. This is not a case where a litigant unilaterally decided on an amount and did nothing else to seek this court's acceptance of the amount of security provided.

[12] The application to stay the award pending the finalisation of the review application is therefore granted given that the applicant has shown a well-grounded apprehension that assets will be attached and that it will suffer irreparable harm should the enforcement of the award not be stayed.

Exemption to furnish security provided for in section 145 (8)

[13] The court already dealt with the applicant's actions in foreshadowing the need to apply for exemption. The founding affidavits in both the review application, and

accompanying the urgent application, set out in detail how an amount of R150 000.00 was arrived at, and why any amount higher would be prejudicial to the applicant's obligations to its residents.

[14] There is no reason for this court to reject the applicant's determination as to what would be a reasonable amount that the applicant can afford to furnish as security without interrupting the applicant's constitutional and statutory obligations to provide municipal services to its people in terms of section 152 (1) (b) of the Constitution of the Republic of South Africa, 1996. The court therefore exercises its discretion in terms of section 145 (7) to exempt the applicant from furnishing security in terms of section 145 (8), and accepts the security already furnished in the amount of R150 000.00 as sufficient to stay the enforcement of the award pending finalisation of the review proceedings.

[15] The court is further satisfied that the applicant has sufficient assets to be able to comply with the award if the review application is dismissed.

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

Order

1. The application to stay the enforcement of the award is granted.
2. The application for exemption from furnishing security as prescribed in section 145 (8) and to furnish security of R150 000.00 is granted.
3. No order is made as to costs.

C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

CN Nyembe assisted by N Rampete

Instructed by:

De Swardt Myambo Hlahla Attorneys

For the First Respondent:

Y Pangwa of Sotenjwa Attorneys

LABOUR COURT