



**THE LABOUR COURT OF SOUTH AFRICA
AT PORT ELIZABETH**

Of interest to other judges

Case no: 2025-104199

In the matter between:

THE DEPARTMENT OF HEALTH

Applicant

and

GARFIELD GATSHENI NDLOVU

First respondent

**PUBLIC HEALTH AND SOCIAL
DEVELOPMENT SECTORAL
BARGAINING COUNCIL**

Second Respondent

PHUMELELE DHLODHLO N.O.

Third Respondent

**SHERIFF OF THE COURT, KING
WILLIAMS TOWN**

Fourth Respondent

Heard: 26 September 2024

Delivered: 2 October 2025

Summary: (Urgent application to stay execution of arbitration award – Employer timeously authorising provision of security but not following through on decision – Enforcement stayed pending provision of security under s 145(8)(a) of the LRA)

JUDGMENT

LAGRANGE, J

Nature of the application

- [1] This is an application brought on an urgent basis to stay enforcement of an arbitration award handed down in favour of the first respondent, Mr G Ndlovu ('Ndlovu') on 18 March 2025, pending finalization of an application to review that award instituted by the applicant ('the department') on 3 July 2025. It also seeks ancillary relief in the form of an interdict to restrain the sale of motor vehicles of the department by auction and directing the fourth respondent ('the Sheriff') to return the vehicles to it. The arbitrator had ordered the department to reinstate Ndlovu on a three year contract commencing with effect from 1 April 2024.
- [2] The department received the arbitration award on 26 March 2025 and advised Ndlovu's legal representatives that it was considering reviewing the award and that Ndlovu should not return to duty. It appears that the award was certified by 22 May 2025.
- [3] The application was prompted by Ndlovu's attempt to enforce the award. A notice of attachment was received by the department on 23 May 2025 at the time it claims it was still busy finalising the review application. On 6 June 2025, the state attorney notified Ndlovu's representatives that review papers were being finalised and that it had invoked the provisions of section 145 (8) of the Labour Relations Act, 66 of 1995 ('the LRA'), "*by furnishing security for an amount of R2,264442.00*", which was equivalent to two years' salary of Ndlovu.

- [4] Nevertheless, on 3 September 2025, the sheriff arrived to attach and remove seven departmental vehicles, which the department uses for service delivery purposes. It claims, without providing particulars of the vehicles, that the absence of the vehicles has compromised its ability to fulfil its functions, which it implies are central, *inter alia*, to the provision of services to pregnant women.
- [5] The matter was originally enrolled on 19 September 2025 but was subsequently removed from the roll on 18 September 2025. The apparent reason for its removal was the unavailability of a judge in Gqerberha to hear the matter. The state attorney claims that it advised Ndlovu's legal representatives that they need not appear in court on that account but it seems there is some dispute about whether the message was conveyed. There does not seem to be any doubt they were advised that the application was removed from the roll, the previous day.
- [6] Be that as it may, the matter was re-enrolled a week later on 26 September 2025. As the matter was heard on the recess urgent roll it was convened virtually using MS-the teams.

Merits

- [7] The department asserts there is added urgency to the application, because it was notified on 16 September that the sheriff intended to sell seven of the attached vehicles on 30 October 2025. Ndlovu argues that the department failed to explain the delay between launching the review and Ndlovu's attempt to execute on the award. He also contends that the fact the matter was removed from the roll reflects a lack of genuine urgency on the department's part.
- [8] The department queries why Ndlovu sought the attachment of the vehicles in circumstances where "*a provision has been made for bond security and stay of enforcement of arbitration award*" (*sic*). It also points out that it has already uplifted the record of the arbitration proceedings on 14 August 2025 and submitted them for transcription.
- [9] I fail to understand what steps the department was supposed to have taken between filing the review application on 3 July 2025 and the attachment by the

sheriff on 3 September 2025. It appears that the department believes it has done everything to forestall an execution of the award prior to the outcome of the review.

[10] While the department repeatedly refers to having provided security equivalent to the value of the arbitration award, it did not attach a copy of the bond of security to this application. At the hearing it was argued that the bond could be found in its review application, which was not before the court hearing the matter remotely in Cape Town. In the circumstances, the court could not ascertain whether it is correct that a bond of security satisfying the requirements of section 145(8)(a) of the LRA has been met. If that requirement has been met, then the operation of the award, and consequently any attempts to enforce the award would have effectively been suspended pending the outcome of the review in terms of section 145 (7) of the LRA.

[11] In (7) In *City of Johannesburg v SA Municipal Workers Union on behalf of Monareng & another*¹ the Labour Appeal Court confirmed the automatic effect of compliance with s 145(8):

“(7) The Labour Court has a discretionary power under s 145(3) of the LRA to stay the enforcement of an arbitration award pending its decision in the review application. It may stay the enforcement of an arbitration award pending finalisation of a review application against the award with or without conditions. It may in terms of s 145(8) of the LRA dispense with the requirement of furnishing security. Properly construed, s 145(3) read with s 145(7) and (8) should be interpreted to mean that where an applicant in a review application furnishes security to the Labour Court in accordance with s 145(8) of the LRA, the operation of the arbitration award is automatically suspended pending its decision in the review application. In other words, the employer need not make an application in terms of s 145(3) of the LRA to stay the enforcement of the arbitration award pending the finalisation of the review application.”

(emphasis added)

[12] It appears from Caselines that the review application was uploaded on 30 September 2025. Attached to the founding affidavit of that application is Annexure “RN5”² an internal memorandum dated 6 May 2025 addressed to the

¹ 2 (2019) 40 ILJ 1753 (LAC).

² Caselines bundle 001-42 to 001-45.

Head of Department, Dr R Wagner entitled “*MEMORANDUM TO REQUEST HOD TO APPROVE BOND OF SECURITY FOR STAY OF ARBITRATION AWARD DATED 18 MARCH 2025 IN THE MATTER OF GARFIELD NDLOVU//MEC FOR HEALTH*”. On 17 June 2025, after proceeding through various other levels of departmental management for recommendation and comments, the request was approved by the Head of Department in an amount of 24 months’ salary.

- [13] From the above it appears that, at the outset, the department, in good faith, took steps to approve the provision of a bond of security and the bond was approved before the review application was served on 3 July 2025.
- [14] However, the approval of a bond of security is not the same as issuance of the bond of security itself. To confirm the existence of security satisfying section 145 (8)(a), there must be a standalone document evidencing the existence of the funds or assets pledged as security to fulfil an unqualified acceptance of an obligation to pay the amount secured to Ndlovu in the event the review application is unsuccessful, unless otherwise directed by the court. Commonly, this is provided in the form a deposit in an attorney’s trust account, but could take the form of a bank guarantee or otherwise secured by a notarial bond, deed of suretyship, or even a cession of rights to an asset. The critical issue is that the amount secured, in the case of an order of reinstatement, must be equivalent to two years’ remuneration, and the undertaking to pay the amount, if the review is unsuccessful, subject only to the court’s direction otherwise, must be evident in the document.
- [15] In the circumstances, while I accept the department has decided to provide the security, it needs to provide a document recording the type of security provided and containing an enforceable undertaking to make the payment, if the review fails.
- [16] Given that the department has acted in good faith in relation to the issue of security, and that it has been reasonably prompt in pursuing the review application, I believe it should be given an opportunity to implement its decision to approve the provision of security.
- [17] On the question of costs, it was not unreasonable of Ndlovu to oppose the application in the absence of a security being provided, rather than just

approved. However, I am not persuaded it was necessary for his representatives to attend court on 19 September, so their fees for attendance on that day should be excluded.

Order

1. The application is dealt with on an urgent basis in terms of Rule 38 of the Labour Court Rules, and any non-compliance with those Rules as to forms and service is condoned.
2. By 30 October 2025, the Applicant must file security in terms of section 145(8)(a) in respect of the arbitration award issue by the Third Respondent on 18 March 2025 under case number PSHS418-24/25 ('the award').
3. Pending the Applicant's compliance with paragraph 2 above:
 - a. the enforcement of the award is stayed;
 - b. the Fourth Respondent is interdicted and restrained from proceeding with the sale of the motor vehicles of the Applicant, attached by it in execution of the award, and
 - c. the Fourth Respondent must forthwith return the motor vehicles of the Applicant attached by it in execution of the award.
4. In the event the Applicant does not comply with paragraph 2, the interim relief ordered in paragraph shall lapse.
5. The Applicant must pay the First Respondent's costs of opposing the application, including the fees of counsel, save for the costs of attendance by his legal representatives on 19 September 2025.

R Lagrange
Judge of the Labour Court of South Africa

Appearances

For the Applicant:

A M Maseti instructed by
the State Attorney

For the Respondent:

M Thys instructed by
Ashley Meyer Attorneys

LABOUR COURT