



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-172308

In the matter between:

KELA SECURITIES (PTY) LTD

Applicant

and

VINCENT JOSEPH FREEMANTLE

First Respondent

THE SHERIFF, SANDTON SOUTH

Second Respondent

Heard: In Chambers

Order: 24 November 2025

This judgment is handed down electronically by circulation to the parties' legal representatives by email and/or uploading on *CaseLines*. The date of hand-down is deemed to be 24 November 2025.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAKHURA, J

- [1] This is an application for leave to appeal the judgment and order of this Court handed down on 6 October 2025. In terms of the judgment, the Court dismissed the applicant's application to stay the writ of execution pending a rescission application and/or a review application. The Court held that the application to stay the writ pending a rescission application was not substantiated and that there was no pending review application because the review application had been deemed withdrawn and/or had lapsed and that the award that the applicant seeks to review is no longer in existence after it was made an order of this Court on 22 November 2023.
- [2] The applicant's case is that a directive issued by a Judge to enroll the matter for hearing effectively breathes back to life a matter that has been deemed withdrawn or a file that had lapsed, and nullifies the order making the award an order of court such that the same court can review and set aside the same award the court had made an order. Further, the applicant complains that the Court ignored the rescission application and seeks to appeal against the punitive cost order.
- [3] The fact that the award was made an order of court was dispositive of the application to stay the writ pending the review application. Even if it was not, the review application is deemed withdrawn and the file is archived. These points are demonstrated in the main judgment.
- [4] The rescission application was brought after the applicant's belated realisation that there was no award that could be the subject of a review application before this Court after the Court made it an order of court. The Court was informed of the application for rescission at the commencement of the hearing. The founding affidavit did not incorporate the rescission application, and the applicant did not seek to supplement its founding papers in the proceedings. This order remained unsubstantiated. The applicant complains that this Court should have considered the rescission application, despite the founding affidavit not disclosing any case

to support the order. This submission is untenable. I have addressed this issue in the main judgment.

- [5] The applicant submits that the cost order was awarded “*without any justification*”. The parties have sought punitive costs order against each other in the main application. In fact, the applicant had sought costs *de bonis propriis* against the employee’s attorneys. The order was not abandoned. Even if it were, it would have been too late. The reasons for the punitive cost order are set out in the main judgment and the suggestion that the order was issued without justification is incorrect.
- [6] For the above reasons, and the reasons in the main judgment, the applicant’s application for leave to appeal does not satisfy the test and stands to be dismissed. The employee has sought the dismissal of the application with costs on a punitive scale. The application is meritless, and the employee should not be impoverished for opposing a misguided and meritless application. The applicant must therefore pay the costs of this application on a party and party scale.

- [7] In the premises, the following order is made:

Order

1. The application for leave to appeal is dismissed with costs.

M. Makhura

Judge of the Labour Court of South Africa