



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025-094402

In the matter between:

LUTCIA PRIMICH GRIESSEL

Applicant

and

TRI-TEMP PROJECTS (PTY) LTD

TRICON AFRICA HOLDINGS (PTY) LTD

Respondents

Heard: 03 November 2025

Delivered: 04 December 2025

JUDGMENT

STEENKAMP, AJ

Introduction

- [1] The matter came before this Court as an unopposed application for the amendment of a writ of execution and further to order the Sheriff of the High Court to attach the bank accounts held by the Respondents in order to execute a writ from proceeds of those bank accounts.

Background facts

- [2] In the strikingly brief founding affidavit filed by the Applicant, she alleges that it was communicated during May 2024 that the employees of Tricon Africa Holdings (Pty) Ltd would be systematically absorbed into Tri-Temp Projects (Pty) Ltd, which was a newly registered entity and that the “*workforce*” of both entities remained the same during the transition. Save to state that she was employed by both of the Respondents, the Applicant made no further allegations with regard to the nature of the dispute between herself and the Respondents.
- [3] The Applicant enumerated other companies or businesses in which Mr. C Crous, his spouse Mrs. G. M. Crouse, and Mrs. T. van Heerden are involved in various capacities. None of these other entities are alleged to be the employer or erstwhile employer of the Applicant. The Applicant simply alleges that some of these entities have the same directors or have shared premises. None of these individuals are joined in these proceedings.
- [4] The only reference to dispute resolution proceedings, ostensibly before the CCMA, is CCMA case number: GATW2437/24. No details about the CCMA proceedings are set out in the founding affidavit, and no arbitration award is appended to the application before this Court. No details of the certification process of such award and proof thereof were disclosed.
- [5] Save for the returns of non-service issued by the Sheriff, there is no evidence before this Court to suggest that the Respondents have been served with the certified awards, and that insufficient assets could be attached to satisfy the writ. The returns of service require some elucidation. The Sheriff attempted to serve the ‘*enforcement of the award*’ at the address indicated therein. The Sheriff could not effect service, as the Tri-Temp Projects (Pty) Ltd was indicated to be unknown at the address. There is no return of service in respect of Tricon Holdings (Pty) Ltd. Accordingly, the certified award was not served on the Respondents, which in turn means that the Sheriff could not make any attempt at execution in the prevailing circumstances.
- [6] The Applicant seeks an order directing the Sheriff to attach the bank accounts that she believes are the bank accounts of the Respondents. The Sheriff is however not joined in the current proceedings.

- [7] The Applicant further made no allegations with regard to the bank accounts, save for attaching a screenshot of First National Bank ('FNB') banking details and an email to her service affidavit. FNB is also not joined to these proceedings.

Legal Framework

- [8] Once an arbitration award has been certified, there is no need for writs of execution to be issued by the Registrar of this Court. In this regard, Section 143(1) of the Labour Relations Act¹ ('LRA') determines that:

'An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued...'

- [9] It is apposite to state that Section 143(1) of the LRA creates a legal fiction. The certified award may be enforced, as if it was an order of this Court.

- [10] A legal fiction is a deliberate assumption that a fact is true even though it is known to be false. It is a pragmatic tool that allows existing legal rules to be applied to new situations, bridge gaps in the law, and ensure justice is served in a practical or consistent manner. By way of example, the *nasciturus fiction* applies to a fetus *in utero*, whereby the unborn child is regarded as having been born for the purposes of accruing certain rights or benefits, provided that the child is born alive. This fiction is encountered most frequently in the law of succession which would entitle an unborn child to an inheritance in terms of a will once the child is born. In rudimentary terms, it means that something is fictitiously assumed to be the case in order for certain legal consequences to follow.

- [11] Legal fictions are often indicated by terms like "deemed," "presumed," or "construed" within legislation. They have a limited scope and cannot be extended beyond their intended purpose. In respect of Section 143(1) of the LRA, the words "as if" creates the fiction that the certified award can be enforced "as if" it was an order of this Court, with the purpose of enabling the Sheriff to execute on the certified award without the employee having to engage in a cumbersome process of first having to approach this Court in terms of Section 158(1)(c) of the LRA to have the award made an order of Court for the purposes

¹ Act 66 of 1995, as amended

of obtaining a writ of execution from the Registrar in execution of the award. The status of the award is thus fictionally assumed to be an order of this Court for the purposes of simplifying the process of execution.

- [12] In *CCMA v MBS Transport CC and Others, CCMA v Bheka Management Services (Pty) Ltd and Others*² ('MBS Transport') the Labour Appeal Court ('LAC') explained it as follows:

"The CCMA does not issue writs in the conventional way. The certified award is the equivalent of a Labour Court order in respect of which a writ has been issued. The certified award is therefore not only assumed to be an order of the Labour Court but it must also be assumed that a writ was issued in respect of that order. The certified award is therefore the writ...."

- [13] The certified award thus stands as the writ of execution.

- [14] It is apposite to state that a certified award is not in fact an order of this Court, and it remains a *sui generis* executable legal instrument until it is made an order of Court in terms of Section 158(1)(c) of the LRA.

- [15] Rule 26 of the Labour Court Rules³, in dealing with the service and execution of orders of this Court, provides that:

'In terms of section 163 of the Labour Relations Act, service and execution of the court's decisions, judgments or orders must take place in accordance with the procedure for service and execution of decisions, judgments or orders of the High Court of South Africa.'

- [16] The corollary is that only actual decisions, judgments or orders of this Court can be executed with deference to the Uniform Rules of Court, and the provisions of Rule 45(8) of the Uniform Rules of Court⁴, which deals with the attachment of

² [2016] 10 BLLR 999 (LAC); (2016) 37 ILJ 2793 (LAC) at para 39

³ GN 4775, G. 50608 of 3 May 2024 which came into effect on 17 July 2024

⁴ Rule 45(8)(c) of the Uniform Rules of Court states that:

'If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided—

.....
(c) *In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid-*
(i) *the attachment shall only be complete when-*

incorporeal property, can thus only be invoked with regard to actual as opposed to fictionally assumed Court orders.

- [17] In *MEC for The Department of Public Works and Others v Ikamva Architects and Others*⁵ ('Ikamva') the full Court explained the purpose of Uniform Rule 45(8) as follows:

'Put differently, the purpose of Uniform Rule 45(8) is simply to authorise attachment of a particular class of property (incorporeal rights) where the judgment creditor previously first had to obtain the leave of the court to execute against such property, and to regulate the way incorporeal rights are attached. What it does not do, is to give the judgement creditor the right to choose which of the judgement debtor's movable property must be attached by the sheriff. The rule, in other words, does not serve as authority for the judgement creditor to choose to only attach a particular incorporeal right belonging to the judgement debtor, and to authorise the registrar to issue a writ that limits the authority of the sheriff to the attachment of specific movable incorporeal property. Subrule (8) cannot derogate from the issuing of a writ as envisaged in subrule (1), in substantial compliance with Form 18.

In addition, Uniform Rule 45 requires several consecutive steps for the valid attachment in execution of the movable property of a judgement debtor. The most important being:

- (a) The issue of a valid writ of execution;
- (b) A demand that the writ be satisfied;
- (c) If not satisfied, a demand that the judgement debtor point out sufficient movable and disposable property, failing which the sheriff is authorised to search for such property;

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- (a) *notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and*
 - (b) *the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document;*
 - (ii) *the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached'. (own emphasis)*

⁵ [2022] 3 All SA 760 (ECB); 2022 (6) SA 275 (ECB) at paras 73 - 74

- (d) The making of an inventory of the goods;
- (e) Subject to Uniform Rules 45(3) and (5), the sheriff shall take the movables into custody;
- (f) The making of a return of the manner of execution;
- (g) If the judgment debtor does not give an undertaking, and unless the execution creditor directs otherwise, the sheriff shall remove the goods to a convenient place of security or keep possession thereof on the premises where they were seized;
- (h) Notice of sale to be forwarded at least 15 days before the date of sale; and
- (i) The sale of the property attached at a sale in execution.

The writ is the source of the sheriff's authority for all actions taken pursuant to the writ. The sheriff derives authority to act from the writ itself and enjoys no residual authority. The manner in which the writ was framed in this instance undoubtedly contributed to the sheriff failing to comply with the proper process during execution. As indicated, the sheriff in this case was '*Directed to attach and take into execution sufficient funds in the Department of Health's Standard Bank account*' (own emphasis) and proceeded accordingly. There is no suggestion that the department was afforded the opportunity, in terms of Uniform Rule 45(3), to point out sufficient movable property, other than the bank account, to satisfy the writ. A judgment debtor should not be deprived of this opportunity before the sheriff searches for property and proceeds to attach so much of the judgment debtor's movables as is sufficient to satisfy the writ.' (own emphasis)

[18] In *Windybrow Theatre v Maphela and Others*⁶ ('Windybrow'), the LAC said that:

'In executing the writ and in performing his functions generally, the Sheriff acts as an officer of the law and not as the agent of the judgment creditor or his attorney. It is not for the judgment creditor to elect in what form or manner execution should take place, or which particular assets should be attached. Execution can only proceed to attachment, sale and distribution, once there is proper service of the writ of execution on the judgment debtor. Failure to do so will render the execution invalid. There will not be an attachment where neither the writ nor the notice of attachment have been served on or brought to the notice of the owner.

⁶ (2016) 37 (ILJ) 2641 (LAC) at para 10

The Labour Court was accordingly correct that the attachment of the applicant's funds was unlawful.' (own emphasis)

Analysis

- [19] The Applicant ostensibly had her arbitration award certified. This is gleaned only from the contents of the returns of non-service. The process the Sheriff attempted to serve on the Respondents or execute was '*enforcement of the award*'. The Sheriff could not have done so in the absence of a certified award. It is accepted that the legal principle applicable is that the certified award authorizes the Sheriff to execute thereupon as if it was a writ of execution.
- [20] The Applicant did not attach the arbitration award, the application for certification or the Form LRA 7.18 to her founding affidavit herein. The only evidence available to this Court is the return of service, which indicates that the enforcement process came to naught as the Tri-Temp Projects (Pty) Ltd were allegedly not known at the premises where the Sheriff attempted to serve and or execute the award. There is no return of service in respect of Tricon Africa Holdings (Pty) Ltd ('*Tricon*').
- [21] From the authorities cited, it is clear that service is essential for execution of an award. Rule 45(8)(b) of the Uniform Rules makes it clear that a demand for satisfaction of the writ must be made to the judgment debtor. *In casu*, no demand has been made to the Respondents, as the enforcement process could not be served at the address set out in the return of service. This Court aligns itself to, and is bound by, the judgment of the LAC in *Windybrow*. Execution may only commence after the writ has been duly served upon the judgment debtor.
- [22] Furthermore, as set out in *Ikamva*, giving the judgment debtor an opportunity to point out sufficient moveable assets to satisfy the writ, as contemplated in Rule 45(3) of the Uniform Rules of Court is necessary prior to execution against incorporeal property, such as bank accounts, held by judgment debtors. The application before this Court falls short on this requirement, as the process could not be served.
- [23] The Applicant has not provided any proof that *Tricon* was ever joined to the proceedings before the CCMA, or whether any dispute between the Applicant and *Tricon* was ever referred to, or conciliated by the CCMA during those proceedings. Due to the Applicant's failure to place the arbitration award before

Court, there is no evidence that any award was ever made against *Tricon*, and this is presumably why the returns of service do not indicate that the Sheriff attempted to enforce the award against it.

- [24] The Applicant failed to put sufficient proof before this Court that the bank accounts identified are indeed the verified accounts of the Respondents.
- [25] The matter at hand must be distinguished from the provisions of Section 143(4) of the LRA, which specifically empowers this Court to make an order in contempt of Court where the defaulting party fails or refuses to perform the act (such as reinstatement) as set out in the certified award. This provision does not apply to awards sounding in money, and the ordinary hierarchical execution process must be pursued.
- [26] An additional point of concern in this matter is that a certified arbitration award does not constitute an actual order of this Court. The purpose of Section 143(1) of the LRA is to facilitate and expedite the enforcement of arbitration awards⁷; however, it does not change the arbitration award into an actual order of this Court. The Sheriff's authority to execute stems from the certified award itself, and the jurisdiction of this Court to intervene or issue directives with regard to the execution of the certified award is not engaged. It must also be noted that the Applicant has not sought a review or variation of the arbitration award.
- [27] The Court is not unsympathetic to the plight of the Applicant, but due process must be followed. This Court can only grant relief where a proper case for such relief is made out and the Court has the requisite jurisdiction to deal with the matter. In this regard, it is useful to refer to the judgment of Rogers, J (as he then was) in the matter of *Nkata v Firstrand Bank Limited and Others*⁸ ('*Nkata*') where the powers of the Court with regard to execution were neatly summarized as follows:

'Where a credit provider obtains a monetary judgment against the consumer for the outstanding amount of the loan, the court order will not include an order for the

⁷ Explanatory memorandum to the Labour Relations Bill, 2012, which Bill then became the Labour Relations Amendment act of 2014, wherein, inter alia Section 143 was amended to simplify execution of arbitration awards. This amendment created a legal fiction in respect of the status of certified arbitration awards. A certified arbitration award is simply that. It is an arbitration award upon which the Sheriff is empowered to execute, without the need to make the arbitration award an order of court prior to execution, as was the law prior to the 2014 amendments.

⁸ 2014 (2) SA 412 (WCC) at para 49

attachment of any property. In such cases, the rules of court entitle the judgment creditor to obtain a writ of execution. The writ is addressed by the registrar to the sheriff. A writ of execution is not itself an 'order'. It is a process which may be issued where an order for the payment of money has been made. Even where the loan agreement is secured by a mortgage bond and the court declares the bonded property to be specially executable, the court's order does not include an order for the attachment of the property. The order of executability merely entitles the creditor to levy execution on the immovable property in terms of rule 46 without first attempting execution against movables in terms of rule 45. The court does not order the immovable property to be attached; it is for the judgment creditor to determine how it will go about execution.'

[28] The issuing of a writ falls within the purview of the powers of the Registrar of this Court, and the execution thereof within the powers of the Sheriff. The current application seeks relief that this Court is unable to grant. This Court has no jurisdiction to "amend" a writ of execution.

[29] The Applicant's application is fatally flawed and must consequently fail.

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

Order

1. The application is dismissed.
2. There is no order as to costs.

L. Steenkamp

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person

For the First Respondents: No appearance

LABOUR COURT