

IN THE LABOUR COURT OF SOUTH AFRICA

Held in Johannesburg

Case No J647/99

In the matter between :

Applicant

and

Respondent

JUDGEMENT

ZONDO J:

- [1] This matter was brought by Potch Speed Den, a firm/company by which one Mr E. Rajah, the respondent, was previously employed. It was brought on the 18th February 1999. The order that was sought was one suspending the enforcement of an arbitration award that was issued by the CCMA on the 2nd November 1998 between the same parties. The suspension or stay of the enforcement of the award is being sought pending the outcome of an application to review and set aside such award. From time to time since the 18th February, the matter was adjourned.

- [2] From what I have said above it will be apparent that this is a matter in which an arbitration award which had been issued against the applicant was made an order of this Court in terms of sec 158(1)(c) of the Labour Relations Act, 1995 (Act No 66 of 1995) (“**the Act**”). The arbitration award was issued by the Commission for Conciliation, Mediation and Arbitration (“**the CCMA**”). The award was issued in favour of the respondent in a dismissal dispute between the parties.
- [3] The question which has arisen in this matter is whether, once an arbitration award has been made an order of Court, a review application of such an “**award**” is competent. If it is competent, then this Court must proceed to consider the applicant’s application on its merits. If it is not competent, then, it seems to me, the reason on the basis of which the applicant is seeking a stay of the enforcement of the “**award**” falls away and the application should therefore not be granted.
- [4] The power of this Court to make arbitration awards orders of this Court is to be found in sec 158(1)(c) of the Act. Sec 158(1)(c) says the Labour Court may “**make any arbitration award . . . other than a collective agreement an order of the Court**”. Sec 145(3) is also relevant because it has been argued on behalf of the applicant that even at this stage of the dispute, what the Court would be doing if it granted the applicant’s application would be to stay the enforcement of the award, as envisaged in sec 145(3) of the Act. In terms of sec

145(3) this Court “**may stay the enforcement of the award pending its decision**”.

[5] The difficulty which confronts the applicant in this matter is that it seeks to review the award of the CCMA in circumstances where this award has been made an order of Court. In my view once an award has been made an order of Court, a change takes place in its legal status of the award. The award becomes an order of that Court like any other order of this Court. Partly that is why this Court tends to examine an award carefully before it can make it its order. This Court does not adopt the attitude that it will merely rubber stamp such awards. However, that does not mean that this Court will examine every detail of the award or that it seeks to satisfy itself whether it would have made the same decision as the commissioner on the matter.

[6] Because this Court is a superior court which enjoys the same level and status as the High Court, its decisions are not reviewable. Accordingly, unless a contrary intention can be gathered from the provisions of the Act, the position would be that such right as a party may have to take the CCMA on review in respect of an award the CCMA has issued, ceases the moment the award is made an order of court and, so long as the order of this court making such award an order of this court stands, it would not be competent for this court to review such an “**award**”. In fact it is wrong to speak of an award once an award has been made an order of Court. It is more accurate to speak of an order of this

Court.

- [7] In my view an applicant who finds himself in a position where he seeks to review an award which has been made an order of Court should first seek to have the order of this Court making the award an order of Court rescinded or set aside (but not on review because that is not competent) and then apply to this Court to review and set aside the award or, as the case, may be, seek to rescind the award in the CCMA. It would appear that in this matter the applicant cannot see its way clear to making an application for the rescission of the order made by this Court because it says it would be unable to satisfy the court that such order was made in its absence. I do not intend going into the issue whether or not the applicant has a right to bring an application to rescind the order made by Mlambo J.
- [8] With regard to sec 145(3) of the Act, I do not think that it supports the submission made by the applicant, namely, that a review application is competent in respect of an **“award”** that has been made an order of Court. Making an award an order of this Court gives rise to certain legal consequences. One of those is the one I have referred to above. I think sec 145(3) contemplates a case where, after an arbitration award has been made, the one party applies to this Court to stay an application to make such an award an order of Court. At that stage one can correctly speak of an award because by then the award has not been made an order of the Court. This does not mean that this Court

has no power to stay the enforcement of its own orders once it has issued them. Of course, it has. This would fall within the ambit of sec 158(1)(g) which empowers this Court to **“deal with all matters necessary or incidental to performing its functions in terms of this Act or any other law”**.

[9] Even if sec 145(3) does not contemplate what I say above it contemplates or even if its ambit is wider than that, I am of the view that it would not detract from the position as I see it that once an award has been made an order of this Court, there can be no review of the award which has been made an order of Court until at least the order of this Court has been rescinded, or until it has in some way been set aside (but not on review) or withdrawn. As the applicant does not appear to intend making any application to have the order of this Court rescinded or set aside, the review application it has filed is, in my view, not competent. Accordingly it would serve no purpose to stay the enforcement of the **“award”** when there is no prospect of the applicant’s review application being successful as Mlambo J’s order stands. In those circumstances the application must fail.

[10] In the premises the application to stay the enforcement of the **“award”** is dismissed. There is to be no order as to costs.

R. M. M. ZONDO

Judge in the Labour Court of SA

3 March 1999