

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: J2421/06

In the matter between:

MR JOSEPH MOLAETSA

Applicant

and

MR A I MEYER

First Respondent

OLD MUTUAL LIFE ASSURANCE

Second Respondent

JUDGMENT

A VAN NIEKERK AJ

On 27 June 2007, I made an order in the following terms:

- 1 The Arbitration Award dated 19 April 2006 and issued by Commissioner Boniswa Mbovane of the Commission for Conciliation, Mediation and Arbitration under case number GAJB 27625-05 is made an order of Court in terms of Section 158(1)(c) of the Labour Relations Act No. 66 of 1995.*
- 2 The Applicant is to pay the costs of this application.*

The Applicant has requested reasons for the order, and these are recorded below.

- 1 The Applicant, in its Notice of Motion, applied to have the arbitration award referred to above made an order of Court in terms of Section 158(1)(c) of the Labour Relations Act. The Applicant further seeks an order in terms of which the Second Respondent is ordered to pay the Applicant “his salary from the 1st day of June 2006 until the day he is allowed to tender his services”.
- 2 The Applicant avers that consequent on the arbitration award being made in his favour in terms of which the Second Respondent was ordered to reinstate the Applicant and pay him compensation, he attended at the Second Respondent’s premises intending to tender his services. He avers that on 29 May 2006, he was advised that the Second Respondent had not yet received the arbitration award in question, and that he was advised that he should deliver the award to the Second Respondent. On 1 June 2006, the Applicant states that he returned to his workplace with the award, but was denied access to the premises. The Applicant was apparently informed that the Second Respondent intended to bring an application to review and set aside the award, and that he (the Applicant) would not in the interim be permitted to tender his services.
- 3 During the course of June 2006, the Applicant avers that with the assistance of a union official, he took the necessary steps to have the arbitration award certified by the CCMA in terms of section 143 of the LRA. It is common cause that the award was certified on 17 October 2006 and that on 4 December 2006, the Registrar of this Court issued a writ of execution pursuant to the certification.

- 4 The Applicant states that on 15 February 2007, he received a cheque from the Sheriff in satisfaction of the monetary component of the arbitration award. His principal claim in these proceedings is the remuneration to which he says he is entitled consequent on his tender of services on 1 June 2006. More precisely, the order the Applicant seeks is one that would require the Second Respondent to pay him his salary for the period between the date of his tender and the date on which that tender is accepted by the Second Respondent.

- 5 The Second Respondent does not dispute that the Applicant was dismissed, or that he successfully challenged his dismissal and was awarded reinstatement and compensation. The Second Respondent's version is that the Applicant was requested to report for duty in June 2006 and that he failed to do so. The Second Respondent avers that despite a number of messages left on the Applicant's cellular telephone, he has not returned to work nor tendered his services. The Second Respondent denies that it ever advised the Applicant of any intention to review the award, and that at all times, it has been willing to comply with the terms of the arbitration award. This tender is repeated in the papers before the Court.

- 6 The Second Respondent records that it is willing to have the arbitration award made an order of Court, despite its view that the present application, to have the award made an order of this Court, is unnecessary, given the certification of the award in October 2006.

- 7 At the hearing of the application, the Second Respondent's counsel reiterated that the Second Respondent had no objection to the arbitration award being made an order of Court in terms of section

158(1)(c), notwithstanding that the Second Respondent did not appreciate the need for an order to this effect. Counsel submitted that in respect of the Applicant's claim for remuneration post-1 June 2006, the Applicant ought to have launched an application for contempt of Court, and that it was not competent for this Court to simultaneously make an arbitration award an order of Court and effectively find the Second Respondent in contempt of Court.

8 Section 143(1) of the LRA provides that an arbitration award issued by a commissioner is final and binding, and upon certification in terms of section 143(3), it may be enforced as if it were an order of the Labour Court. As I have noted above, there was no dispute that the arbitration award was so certified.

9 As I noted above, the Applicant approached this Court primarily to seek an order in terms of which he was to be paid remuneration from the date on which he alleges that he tendered his services i.e. 1 June 2006, to the present. I agree that it is not competent for this Court, in these proceedings, and on the papers before it, to make such an order. The Applicant ought properly to have instituted contempt proceedings given his claim that the Second Respondent had refused his tender of services, and given that the arbitration award reinstating him in the Second Respondent's employ had been certified in terms of section 143(3).

10 Section 143(4) provides that if a party fails to comply with an arbitration award that orders the performance of an act, other than the payment of an amount of money, any other party to the award may enforce it by way of contempt proceedings instituted in the Labour Court. It seems to me on a proper construction of this subsection that it is not necessary for a party to approach this Court for an order in terms of section 158(1)(c), prior to initiating any

contempt proceedings (see *MIBCO v Osborne & others* [2003] 6 BLLR 573 (LC)). Section 143 was enacted to provide an expeditious and inexpensive mechanism to enforce arbitration awards. The construction that the Applicant seeks to place on section 143 is not only at variance with its wording, but also its purpose.

- 11 All of these issues were raised by the Respondent in its papers and its Heads of Argument. The Applicant and the union official that assisted him (a Mr Gobile, apparently an official of OCGAWU) had ample warning of the arguments that the Second Respondent intended to raise in these proceedings and more specifically, he was warned that in the circumstances, the Second Respondent would seek an order for costs. Despite this, the Applicant (assisted by Mr Gobile) persisted with arguments that, as I have noted above, simply have no foundation.
- 12 With the consent of the Second Respondent, the arbitration award was made an order of Court in terms of section 158(1)(c) of the Act. In view of the Applicant's conduct in persisting with an application for relief to which he ought to have realised he was not entitled, I considered it to be in the interests of both the law and fairness that the Applicant be ordered to pay the costs of these proceedings. The Applicant was no doubt ill-advised by Mr Gobile, but that is not a basis on which the Second Respondent should be prejudiced by having to incur the costs necessary to persist in its opposition to this application, despite the warning that it afforded the Applicant.
- 13 For the above reasons, I accordingly made the order that I did on 27 June 2007.

ANDRÉ VAN NIEKERK,
Acting Judge of the Labour Court

Date of hearing: 27 June 2007

Date of judgment: 6 July 2007

Applicant's representatives: Mr Gobile

Instructed by: OCGAWU

Respondents' Representative: Mr E Tolmay

Instructed by: Bowman Gilfillan