

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO J2833/07

In the matter between:

METALLON CORPORATION (PTY) LTD

APPLICANT

AND

SOLOMON MAANS

1ST RESPONDENT

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

2ND RESPONDENT

RONELDA JURIES N.O

3RD RESPONDENT

DEPUTY SHERIFF DANIE BUZUIDENHOUT

4TH RESPONDENT

REASONS FOR THE ORDER

MOLAHLEHI J

Introduction

[1] The Applicant has requested reasons arising from an order issued on the 18 December 2007, in terms of which this Court dismissed its urgent application. The application which was dismissed for lack of urgency sought

to interdict the Writ of Execution issued on 2nd November 2007, pending the review application that was filed by the First Respondent (the employee) under case number JR 2309/07.

[2] The Writ of Execution was as a result of the Applicant having failed to effect the implementation of the arbitration award issued by the Third Respondent (the Commissioner) under case number GAJB 8848/07 dated 11th August 2007. In terms of this arbitration award, the Commissioner found the dismissal of the employee to be procedurally unfair and ordered compensation in the amount of R41 164.20. The dismissal was however found to be substantively fair.

[3] The employee sought to enforce the compensation award in terms of section 143 of the Labour Relation act 66 of 1995 (the LRA) and also filed a review challenging the conclusion of the Commissioner that the dismissal was substantive fair.

[4] As concerning the enforcement of the award the employee, faxed a notice in terms of section 143 of the LRA to the Applicant on the 2nd October 2007. It

is apparent that the Applicant did not oppose the application and the award was certified as if it was an order of this Court.

[5] The applicant avers in its founding affidavit that its application was urgent because; “... *the Applicant did not create its own urgency. The applicant only served with the Writ of Execution on the 10th December 2007.*”

[6] The Applicant argued in its founding affidavit that the review application must be heard first before it can effect payment ordered by the arbitrator in particular because the employee in its review papers contended that the Commissioner committed a gross irregularity or misconduct in relation to her duties as a Commissioner. In this regard the Applicant further contended that the employee could not enforce an arbitration award based on gross irregularity.

[7] The other argument advanced by the Applicant in support of its case was that it would suffer irreparable harm if the Writ of Execution was not stayed because if the award was reviewed and set aside the applicant would not be

able to recover the amount paid to the employee because he is “*a man of straw.*”

[8] Mr Thabethe, for the Applicant contended that the Applicant intended bringing an application to review the arbitration award and challenge conclusion of the Commissioner regarding both the substantive and procedural fairness of the dismissal. He further indicated that the reason why the Applicant has not yet filed its review application was because it was still awaiting the record that would be produced arising from the review application of the employee. It is only once the record of the arbitration award is received from the employee that the Applicant would institute its review application.

[9] The case of the Applicant as indicated earlier is that its application was urgent because it only received that Writ of Execution on the 10th December 2007. It is however, not the case of the Applicant that it did not receive the arbitration award. It is evidently clear that the Applicant did not do anything to challenge the award once it was issued. The case of the Applicant is that it was contemplating bringing an application to review the award when it received the employee’s review application on the 2nd October 2007. On the

same day the employee served its application in terms of section 143 of the LRA. The Applicant did not oppose the application. The Applicant only reacted on receipt of the Writ of Execution.

[10] In my view, the Applicant has failed to discharge its duty of proving the existence of urgency in its case. At best if urgency existed, it was self created by the Applicant.

[11] In the light of the above I came to the conclusion that the matter was not urgent and accordingly issued the following order:

1. The application dismissed for lack of urgency.
2. There is no order as to costs.

MOLAHLEHI J

DATE OF HEARING AND THE ORDER: 18 DECEMBER 2007

DATE OF REASONS FOR THE ORDER: 24 JANUARY 2008

APPEARANCES

For the Applicant: Adv Thabethe

Instructed by: Ramushu Morare Inc.

For the Respondent: D Gobile of Ubuntu Labour Organisation of South Africa

