IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: J 717/2022

Not Reportable

In the matter between:

G4S CASH SERVICES SA (PTY) LTD	**Applicant**
and	
THE SHERIFF, CENTURION EAST	**First Respondent**
XOLILE NGIDI	**Second Respondent**

Application heard: 22 June 2022

Delivered: 29 June 2022

JUDGMENT

WHITCHER J

[1] This is an application to lift and set aside the enforcement of a notice of attachment in execution. I am satisfied that the matter is urgent.

[2] Following an arbitration award issued in favour of the second respondent, the applicant filed a review application under case Number JR 2414/2011.

[3] On the day of the hearing of the matter, the parties signed a settlement agreement and it was made an order of the court.

[4] The terms of the agreement are that the applicant would pay the second respondent R130 000.00 and apply for a tax directive from SARS. The agreement bears the same heading of the review application (parties and case number), and submits that the agreement is in full and final settlement of the dispute and of all claims of any nature that the parties may have against each other.

[5] A month later, the applicant received correspondence from the second respondent's then legal representative querying why tax had been deducted from the settlement amount paid to the second respondent. Citing the terms of the agreement and case law, the applicant's representative submitted that the applicant had been obliged to make the deduction.

[6] Six months later, on 27 September 2021, the applicant received a letter of demand from the second respondent's current attorneys, G Majeke Attorneys (Majeke). They demanded the applicant comply with the arbitration award.

[7] On 1 October 2021, the applicant's representative responded. He submitted with documentation that the matter had been settled.

[8] Eight months later, on 31 May 2022, the Sheriff executed an attachment of property of the applicant. The applicant's attorney once again submitted to Majeke that the matter had been settled and that the applicant had complied with all its obligations in the matter. When this was not heeded, he informed Majeke that an urgent application to set aside the warrant was being filed. Furthermore, punitive costs and costs de *bonis propriis* would be sought.

[9] At the hearing of the application, counsel for the second respondent referred the court to the Constitutional Court judgment in *Airports Company South Africa v Big Five Duty-Free Ltd and Others* where the court at paragraph [1] held that:

> This judgment makes clear two legal propositions. The first is that a judgment in rem may not be set aside by only a settlement agreement between the litigating parties in an appeal against that judgment. For a judgment in rem to be set aside by a settlement agreement, the court hearing the appeal must give its sanction to the agreement being made an order of the court on the basis that the setting aside is justified by the merits of the appeal. The second is that the court sanctioning the settlement should give its reasons for doing so.

[10] This, he submitted, means that the arbitration award may not be set aside by only a settlement agreement between the applicant and the second respondent. They were still required to bring the settlement agreement before the reviewing court for the court to give its sanction to the agreement being made an order of court on the basis that the setting aside of the award is justified by the merits of the review application, and, secondly, the court sanctioning the settlement agreement ought to give its reasons for doing so.

[11] Furthermore, the settlement agreement says nothing about the terms of the award, more importantly reinstatement. This, according to *Eke v Parsons*[1]*,* makes the settlement agreement odd and contrary to what the Constitutional Court has held.

[12] I reject as disingenuous and an abuse of court process these attempts to wriggle out of a valid settlement agreement by relying on legal authority which plainly have no application to the award, review application and the settlement agreement.

[13] I strongly suspect that what I am about to write is well-known by counsel for the second respondent because the very judgment he relied on explained what is a judgment in rem in the paragraph immediately below the one he quoted.[2]

[14] The Court explained in paragraph [2] that:

> "A judgment in rem determines the objective status of a person or thing.[3] This Court has adopted an objective theory of invalidity regarding the exercise of public power.[4] A judgment that declares a tender invalid, because it is unlawful in contravention of section 217 of the Constitution,[5] is an objective pronouncement on the constitutional validity

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[1] 2016 (3) SA 37(CC).
[2] He also presented as smart and knowledgeable.
[3] *Tshabalala v Johannesburg City Council* 1962 (4) SA 367 (T) at 368H.
[4] *Shoprite Checkers (Pty) Ltd v MEC for Economic Development, Eastern Cape* [2015] ZACC 23; 2015 (6) SA 125 (CC); 2015 (9) BCLR 1052 (CC) at para 31; *Ferreira v Levin N.O.; Vryenhoek v Powell N.O.* [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC) (*Ferreira*) at para 26.
[5] Section 217 of the Constitution states:
> "(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts

of an administrative act. That kind of judgment has a public character that transcends the interests of only the litigating parties. It is a specific kind or example of a judgment in rem."

[15] A judgment in rem is thus distinguishable from a judgment in personam. It concerns the status of a person or the right to title of a thing (proprietary matters) and has a public character that transcends the interests of only the litigating parties.

[16] Neither the award nor the settlement agreement transcends interests beyond the applicant and the second respondent. There were no resolutions of any constitutional and public interest issues to be made that would have had an impact beyond them. Therefore, it was not a requirement that, in order for the settlement agreement to be made an order of court, "its terms accords with both the Constitution and the law and must not be at odds with public policy".

[17] In summary, the judgments relied on by counsel for the second respondent are not applicable to the settlement agreement concluded by the applicant and the second respondent, and it appears that counsel for the second respondent knowingly burdened the court and the applicant with an irrelevant argument.

[18] Moreover, the settlement agreement between the applicant and the second respondent is not inconsistent with public policy in that it has been held that: "A compromise once lawfully struck is very powerfully supported by the law, since nothing is more salutary than the settlement of lawsuits".

[19] I also note that the second respondent at no stage made an offer to return the money paid to him more than a year ago in terms of the settlement agreement.

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for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for—

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented."

Order

[20] In the result, the following order is made:

1. The enforcement of the notice of attachment in execution issued under case number GPRFBC14762 is set aside.

2. The second respondent is ordered to pay the costs of the applicant on an attorney and client scale.

3. The second respondent's representatives are ordered to pay half of the costs ordered.

Whitcher J
Judge of the Labour Court of South Africa

Appearances

For applicant:	Mr Crafford of Crafford Attorneys
For second respondent:	Advocate N Nemukula
Instructed by	G Majeke Attorneys