



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025/054448

In the matter between:

**THE GAUTENG DEPARTMENT OF
COMMUNITY SAFETY**

Applicant

and

**THE GENERAL PUBLIC SERVICE SECTORAL
BARGAINING COUNCIL**

First Respondent/Defendant

COMMISSIONER ITUMELENG KGATLA N.O.

Second Respondent/Defendant

SUENELTA CELESTINE MARTIN

Third Respondent/Defendant

**THE SHERIFF OF THE COURT:
JOHANNESBURG CENTRAL**

Fourth Respondent/Defendant

Heard: 30 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's

website. The date for hand-down is deemed to be on 30 May 2025.

JUDGMENT

INTRODUCTION

[1] In this opposed urgent application, the applicant seeks the following orders:

[1.1] that the enforcement of the arbitration award issued under the auspices of the General Public Service Sectoral Bargaining Council under case number GPBC 1148/2023 on 25 June 2024 by Commissioner Itumeleng Kgatla is stayed in terms of s145(3) of the Labour Relations Act, 66 of 1995, pending the outcome a review application launched with this Honourable Court under case number 2025-043082;

[1.2] The third, fourth respondents are interdicted and restrained from enforcing the arbitration award which was granted under the auspices of the General Public Service Sectoral Bargaining Council under case number GPBC 1148/2023 on 25 June 2024 pending the outcome of a review application launched with this Honourable Court under case number 2025-043082.

[1.3] The third and fourth respondents are interdicted and restrained from removing the attached movable property of the Gauteng Department of Community Safety and selling the said movable property at public auction, pending the outcome of the review application launched by the applicant with this Honourable Court under case number 2025-043082.

[1.4] exemption from security of costs in terms of s145(7) of the Labour Relations Act, 66 of 1995

BACKGROUND

[2] The background to this application is summarised as follows:

2.1. The third respondent, Ms Martin, is employed by the applicant since May 2013 as a provincial inspector. She was assigned to a specialised unit in January 2023 and her duties, involved law enforcement, recovery of hijacked and stolen vehicles, drug bust operations, earning a salary of R23 000 per month.

2.2. The applicant invited Ms Martin and other officials to indicate whether or not they would want to participate in a drone pilot training programme to commence 12 May 2023 and she was provided with the study material on 22 May 2023.

2.3. On 26 May 2023, the third respondent was informed by the Chief Provincial Inspector, Mr Govender, that only the training of crime prevention wardens will continue. The Department emphasised that the training will only be for crime prevention wardens which will be facilitated by private and independent company, Henry Air.

2.4. Ms Martin contended that the withdrawal from the training programme constituted an unfair labour practice in relation to training and, as a result thereof, referred the matter to the relevant bargaining council.

2.5. The Department, however, contends that the withdrawal from the programme was due to operational reasons, namely budgetary constraints and the need for the Department to follow procurement processes. These reasons were communicated to the third respondent and other affected employees at the time of the withdrawal from the programme.

2.6. The second respondent, in his award, came to the conclusion that the applicant committed an unfair labour practise. He awarded, Ms Martin compensation in the amount of R47 665.76, equivalent to two months' salary. He also ordered that the applicant include the third respondent in the next batch of drone pilot training and that the award was to be implemented by 31 July 2024.

2.7. It is this arbitration award that the applicant has taken on review and is pending before this Honourable Court under case number 2025-043082. In addition thereto, the Department also applied for the condonation for the late filing of the review.

2.8. On 20 March 2025, the Sheriff of the Court, Johannesburg Central, executed a warrant of execution by presenting a notice of attachment to the Department. The sheriff then proceeded to attach one hundred desks which are estimated to be at a value of R30 000 and two hundred chairs, which are estimated to be at a value of R20 000, the total inventory amounting to R50 000. The sheriff of the court has not yet removed the attached property from the Department. The removal and sale in execution is, however, imminent.

URGENCY

[3] It is trite that an applicant who institutes urgent proceedings in this court must justify the necessity to circumvent the ordinary timeframes as set out in the rules of this Court. Rule 38 of the rules of this Court govern the bringing of urgent applications.

[4] An applicant must set out the circumstances and objective facts which render the matter urgent and must demonstrate why substantial redress cannot be obtained at a hearing in due course.

[5] From the founding affidavit, it is evident that the arbitration award was to be implemented on 31 July 2024. No review application was filed prior to the sheriff

executing a warrant of execution on 20 March 2025. The applicant only filed its review to set aside the abovementioned arbitration award on 4 April 2025 under case number 2025-043082.¹

[6] The respondents' representative, Mr Mahapa from the Public Servants Association, stipulated that the review application has been prosecuted very late and with no haste. I agree with this submission.

[7] The applicant contends that this matter is urgent because the sheriff has already attached the assets on 20 March 2025. The attachment has already been effected on 20 March 2025 and this has serious implications for the applicant. Taking into account the importance of this matter to both parties, I deem it in the interests of justice that the matter be heard as one of urgency and for the merits to be disposed of.

MERITS

[8] It is trite that this court may, in terms of s145(3) of the Labour Relations Act, 66 of 1995 ("the LRA"), stay the enforcement of the arbitration award pending its decision in a review application. The principles to be considered when determining whether an application for a stay of execution should be granted was reaffirmed in *Gois t/a Shakespeare's Pub v Van Zyl and others*² where the court states as follows:

"(a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.

(b) The court will be guided by considering factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert justice.

(c) The court must be satisfied that:

¹ Case lines: Founding Affidavit 002-22.

² 2011 (1) SA 148 (LC)

(i) *the applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and*

(ii) *irreparable harm will result if execution is not stayed and the applicant ultimately cedes in establishing a clear right.*

(d) *Irreparable harm will invariably result if there is a possibility that the underling causa may ultimately be removed, i.e. where the underlying causa is the subject matter of an ongoing dispute between the parties.*

(e) *The court is not concerned with merits of the underlying dispute, the sole enquiry is simply whether the causa is in dispute."*

[9] In exercising my discretion, it is not necessary for this court to decide whether or not the case advanced in the review application has merit or not. The applicant submits that it has reasonable prospects of success in the review application as the commissioner ignored material evidence, thus resulting in a gross irregularity and rendering the award unreasonable.

[10] It is common cause that the fourth respondent attended at the offices of the applicant on 20 March 2025 to attach and remove the assets of the applicant. The applicant submitted that the requirements for an interim interdict have been established.

[11] The applicant averred that it had a *prima facie* right to interdict the aforementioned arbitration award under circumstances where the sheriff has attached assets. The applicant submitted that it will suffer irreparable harm should the third and fourth respondents be allowed to proceed with the planned removal of the Department's attached movable property.

[12] The applicant's representative further submitted that there was no alternative remedy but to approach this court since the sale of the movable property at public auction was imminent and that the balance of convenience favoured the applicant.

[13] The third respondent's representative criticised the applicant for the immense delay in prosecuting the review application and failing to comply with the provisions of the arbitration award. Mr Mahapa further argued that the applicant had no prospects of success in the review application.

[14] In *Chillibush Communications (Pty) Ltd v Michelle Gericke and others*³, the approach of this court in dealing with applications to stay a writ of execution pending a review or rescission application was summarised as follows:

*"In terms of section 145(3) of the LRA, the court has a discretion to stay the enforcement of the arbitration award pending the outcome of the review application. This discretion which is very wide has to be exercised judicially taking into account certain factors. The most important consideration in the exercise of the discretion is whether there is a pending underlying cause of action arising from the arbitration award or in certain instances arising from the court order. There is a wide range of factors which the court will take into account in considering whether or not to order a stay of the execution of an arbitration award, the most important of which is whether the interests of justice supports the stay of execution pending the finalisation of the review or rescission application."*⁴

[15] The third respondent's representative conceded that there was a review application before this court, however that the applicant had a hurdle to cross in respect of condonation for the late filing of the review.

³ (2010) 31 ILJ 1350 (LC)

⁴ at para [18]

[16] I am, however, satisfied that there is a *causa* underlying the writ of execution that may be removed if or when the application to review and set aside the arbitration award is finally determined. It is evident that irreparable harm will result if the execution is not stayed and the review application succeeds. It is evident that the applicant has no alternative remedy available to it.

[17] As a result, I am satisfied that the applicant has made out a case in respect of the stay of the writ of execution.

[18] The applicant also, in terms of s145(7) of the LRA, seeks an exemption from the security of costs. At the hearing of this application, the applicant had not furnished security as required. The applicant's representative made submissions that this court should exonerate it from providing security for costs and order that the attached property, serves as security for costs.

[19] The applicant, did not make out a proper case for the exemption of the provision of security in accordance with s145(8).

[20] In *City of Johannesburg v SA Municipal Workers Union obo Monareng and another*⁵, the Labour Appeal Court (LAC) upheld the principles outlined that all employees, whether in the public or private sector, should be subject to the same requirement of providing security⁶ thereby disallowing the contrary view adopted in *Free State Gambling and Liquor Authority v Commission for Conciliation, Mediation and Arbitration and others*.⁷

[21] It is trite that the onus is on the employer seeking an exemption from furnishing security under s145(8) of the LRA to establish that it has assets of sufficient value to

⁵ (2019) 40 ILJ 1753 (LAC) at para [20]

⁶ *Rustenburg Local Municipality v South African Local Government Bargaining Council* (2017) 38 ILJ 2596 (LC)

⁷ (2015) 36 ILJ 2867 (LC)

meet its obligations should the arbitration award be upheld by the Labour Court on review.⁸

[22] In this instance, the applicant's representative indicated that the writ of attachment showed an inventory to the value of R100 000, but in the founding affidavit the estimated amount is reflected as R50 000.00. The applicant submitted that this should be sufficient security for costs in terms of section 145(7) of the LRA as the compensation awarded was R47 665.76

[23] Taking into account all the facts of this matter, I am satisfied that the assets of the applicant listed in the inventory shall serve as security for the purposes of s145(7) and (8)(b) of the LRA.

COSTS

[24] In terms of s162 of the LRA, the court has a wide discretion in awarding costs. The Constitutional Court has recently reiterated in *Zungu v The Premier of the Province of KwaZulu-Natal and others*⁹ that costs orders should be made in accordance with the requirements of law and fairness.

[25] I have considered Mr Mahapa's request for costs. I am mindful that section 161(2) stipulates that no party representing the applicant in the capacity as office bearer or official of that party's union may charge a fee, unless permitted to do so.

[26] I have duly considered facts before me and taking into account the ongoing relationship between the applicant and the respondent, I am of the view that in the interest of law and fairness, there should be no order as to costs.

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

⁸ *City of Johannesburg (supra)* at para 20

⁹ (2018) 39 ILJ 523 (CC)

Order:

1. The forms and service provided for in Rule 38 of the Rules of this Court are dispensed with and the application is dealt with as one of urgency.
2. The enforcement of the arbitration award issued under the auspices of the General Public Service Sectoral Bargaining Council under case number GPBC 1148/2023 on 25 June 2024 by Commissioner Itumeleng Kgatla is stayed in terms of s145(3) of the Labour Relations Act, 66 of 1995, pending the outcome a review application launched with this Honourable Court under case number 2025-043082.
3. The third, fourth respondents are interdicted and restrained from enforcing the arbitration award which was granted under the auspices of the General Public Service Sectoral Bargaining Council under case number GPBC 1148/2023 on 25 June 2024 pending the outcome of a review application launched with this Honourable Court under case number 2025-043082.
4. The third and fourth respondents are interdicted and restrained from removing the attached movable property of the Gauteng Department of Community Safety and selling the said movable property at public auction, pending the outcome of the review application launched by the applicant with this Honourable Court under case number 2025-043082.
5. The assets of the applicant listed in the inventory as annexed to the applicant's founding affidavit shall serve as security as contemplated in section 145(7) and (8) of the Labour Relations Act 66 of 1995.
6. No order as to costs.

L. Ah Shene

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms N Lebesse of The State Attorney

For the Respondent: Mr K Mahapa (Union official from PSA)

LABOUR COURT