



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, DURBAN
JUDGMENT

Case no: D 1085/11

In the matter between:

AFRIPILE (PTY) LTD

Applicant

And

CCMA

First Respondent

RASHEED AMOD

Second Respondent

Heard: 9 March 2012

Delivered: 27 March 2012

JUDGMENT

VAN NIEKERK J

- [1] The applicant seeks a rule *nisi* calling on the first and second respondent to show cause why a writ of execution issued on 22 August 2011 under case number KNDB 4835/11 should not be stayed, and attachments made pursuant to the writ set aside. The parties agreed that given the exchange of full affidavits, the matter should be argued as if for a final order.
- [2] The writ has its origin in a settlement agreement concluded between the parties on 14 July 2011. In terms of the agreement, the second

respondent was to be reinstated on the basis that he would work short time, and that his remuneration would be reduced accordingly. In addition, the applicant agreed to pay the second respondent the sum of R 202 788, being unpaid salaries and contributions to retirement funding. The sum was to be paid in an instalment of R10 000 payable on 1 July 2011, R50 000 on 31 July 2011, and the balance in monthly instalments of R10 000 to be paid on the last day of each month until payment of the full amount. The settlement agreement was made an arbitration award certified.

- [3] The second respondent contended that the applicant had failed to comply with the terms of the agreement, and on 22 August 2011, without notice to the applicant, he had issued the writ that is the subject of these proceedings. The writ was issued in the sum of R 188 039.98. That amount is calculated by deducting from the total indebtedness in terms of the agreement (the agreed figure of R 202 788, 00) plus salary claimed for April, May, June, July 2011, less payments received of R10 000 on 20 July 2011, R35 000 on 2 August 2011 and R5 000 on 5 August 2011. It is apparent from these figures that the applicant was in default of its obligations in terms of the settlement agreement as at the date on which the writ was sought – a total of R50 000 had been paid, whereas an amount of R70 000 (excluding any salary payable post the second respondent's reinstatement).
- [4] In these proceedings, the issue of the alleged non-payment of amounts in respect of the sale of the applicant's assets was not pursued. The proceedings were confined to the issues of the alleged non-payment of the settlement amount, and the alleged non-payment of salary. The second respondent contends that he was entitled to have the writ issued in the sum of R188 039.98 since the settlement agreement contemplated his right to remuneration (albeit at a reduced rate) post his reinstatement, and that the agreement contained an implied term to the effect that in the event of the applicant's default in respect of any one payment, the full amount then owing would become payable. In regard to the former contention, the second respondent submits that he was entitled to appropriate the payments made to his salary then outstanding, which he did.

[5] This is not a dispute which I am able to determine on the papers before me. First, it is not clear for what purpose the payments by the applicant to the second respondent were made. The payments were not designated as being in respect of the settlement amount, or the second respondent's agreed salary post reinstatement. If the second respondent was entitled first to appropriate amounts not designated for any other purpose to payment of his salary (and this appears from the e-mail correspondence attached to the answering affidavit to be what he did) then the writ was issued in the correct amount. Secondly, it is clear to me that the applicant's contention that it was not indebted to the second respondent as at the date on which the writ was issued cannot be correct. During argument, the applicant's representative appeared to concede this, but was unable to quantify the extent of the applicant's indebtedness, if any, at this point. In these circumstances, the dispute between the parties as to the extent of the applicant's indebtedness to the second respondent (if any) as at the date on which the writ of execution was issued is a matter that ought appropriately to be referred for determination after hearing oral evidence. The court ought then to be in a position to decide whether the writ was validly issued, and/or whether the attachment in terms of the writ ought to be set aside.

[6] I make the following order:

1. The matter is referred to oral evidence for a determination of whether the applicant was in breach of the settlement agreement concluded between the parties, and in particular, the extent of the applicant's indebtedness to the second respondent, if any, in terms of the settlement agreement concluded between the applicant and the second respondent, as at the date on which the writ of execution was issued.
2. Pending the outcome of the above proceedings, the enforcement of the writ of execution issued under case number KNDB 4835/11 is stayed, subject to the condition that the applicant shall be entitled to use the attached property in the ordinary course of business operations.

3. The costs of these proceedings are to be determined by the trial court.

Van Niekerk J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: Ms SM Herselman, Barkers Attorneys

SECOND RESPONDENT: G Harrison, instructed by Haralambous Attorneys