



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

**Not Reportable
CASE NO. J 1215/17**

In the matter between:

CITY OF JOHANNESBURG

Applicant

and

SAMWU obo LUCAS MONARENG

First Respondent

**THE SHERIFF
(JOHANNESBURG NORTH)**

Second Respondent

Heard : In Chambers

Date delivered: 29 September 2017

**JUDGMENT
(LEAVE TO APPEAL)**

BALOYI AJ

Introduction

1. On 08 June 2017 while sitting in urgent court I made the following order:
 - “1. This application is heard as one of urgency as provided for in terms of Rule 8 and the Applicant’s failure to comply with normality in the periods, forms and services as provided for in terms of the rules is condoned.
 2. The enforcement of the award issued under case number JMD 011607 and HO362-17 is stayed pending review application subject to the Applicant delivering a resolution by Council in order to furnish security by no later than 10 August 2017 as required in terms of Section 145(8)(9) of the LRA in view of specific performance ordered in terms of the award.
 3. The matter is enrolled to 10 August 2017 for purposes of establishing fulfilment of condition on security failing which the order shall lapse.
 4. There is no order as to costs.”
2. It is apparent that by 10 August 2017 the Applicant did not furnish security as ordered but sought another order staying the writ of execution pending determination of application for leave to appeal filed on 23 June 2017. Consequently my Learned Brother Myburgh AJ made the following order:
 1. The matter is postponed sine die pending the finalization of the application for leave to appeal, with costs being reserved.
 2. The writ of execution is stayed pending the outcome of the application for leave to appeal.”

The grounds upon which leave to appeal is sought

3. I deem it not necessary to deal in detail with the two grounds raised. What is central to the Applicant’s case is that as a local government authority, it is not required to furnish security in terms of section 145 of the Labour Relations Act.

4. Since the issue of security is of public interest coupled with the fact that the Labour Court has handed down conflicting judgments in this regard, leave to appeal should accordingly be granted.

Evaluation

5. It needs no further introduction that the provisions related to security came into the Labour Relations Act through amendments which came to effect in January 2015. This issue has certainly led to different reactions from litigants and the court had perpetually been placed to task of making pronouncements in this regard.
6. The conflicting judgments handed down by this court which the Applicant referred to are;
 - 6.1 Firstly *Free State Gambling and Liquor Authority v CCMA & Others*¹ wherein the court ruled that the Applicant in the review application whose position is similar to that of the Applicant is not required to furnish security,
 - 6.2 Secondly in *Rustenburg Local Municipality v South African Local Government Bargaining Council & Others*² it was to the contrary held that the public service institutions have to furnish security for purposes of section 145.
7. Based on what may appear to be conflicting decisions, there exist a compelling reason for the hearing of the appeal³. I find no reason why the application should not be granted.

¹ (2015) 36 ILJ 2867 LC.

² [2017] ZALCJHB 216 (30 June 2017)

³ Section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013.

8. In the premises the following order is made:

8.1 The application for leave to appeal is granted.

8.2 There is no order as to costs.

BALOYI AJ

Acting Judge of the Labour Court of South Africa

Appearances: Determined in chambers