

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: JR1522/12

In the matter between:

VUYO PETROLEUM (PTY) LIMITED

Applicant

and

ABDUL KADER AHMED

First Respondent

FIROZE ABOOBAKER KOTWAL

Second Respondent

Heard : 18 September 2019

Judgment delivered: 20 September 2019

JUDGMENT

VAN NIEKERK J

- [1] This is an application for leave to appeal against an order granted by this court on 15 August 2019 when the court ordered that the applicants be permitted to

take possession of and dispose of the respondent's immovable property and to perfect the bond of security under general notarial bond number 2001/018774/07.

- [2] The matter has a long history. It has its roots in an arbitration award issued on 8 June 2012 when an arbitrator acting under the auspices of the motor industry bargaining council held that the applicants in the present proceedings had been unfairly dismissed and awarded them each equivalent of five months' remuneration in compensation. On 12 September 2018, an application by the respondent in the present proceedings to review and set aside the arbitration award was dismissed.
- [3] The present application came before the court on 8 August 2019. On that date, the court issued order in terms of which the matter was postponed to 15 August 2019 with the respondent (the applicant in the present proceedings) or to file an answering affidavit on or before 13 August 2019. The applicant failed to file an affidavit timeously. When the matter was called on 15 August 2019, the applicant sought a further postponement of the proceedings, which was refused. The reason for refusing the postponement included, amongst other things, the fact that the application had been postponed to 15 August 2019 by agreement between the parties, and that affidavit was filed out of time and with no application for condonation.
- [4] After having been satisfied that a proper case had been made out in the founding affidavit (and which was not seriously disputed in the answering affidavit), the court granted an order in terms of the draft order submitted by the applicants' counsel.
- [5] The applicant seeks leave to appeal on a number of grounds. I do not intend to for the purposes of present proceedings to canvas them all. The applicant contends amongst other things, that the court erred in not allowing the applicant enough time to obtain legal representation. As I have indicated, the matter was postponed to a specific date by agreement between the parties and the fact that the applicant's legal representative had failed to attend at court was no reason to

further delay an already protracted matter. The same consideration applies to the applicant submission that the court erred in treating the matter as one of urgency when the application was not urgent. In the answering affidavit filed by the applicant, it was not seriously disputed that the amounts reflected in the arbitration award, together with interest, were payable. The sheriff had filed a *nulla bona* return, and the application in essence was one in which the respondents in the present proceedings sought to perfect the security that they held. No cogent reason was proffered to deny them that right.

[6] The arbitration award concerned was issued more than seven years ago and the applicant has made no attempt to make payment of the compensation to which the respondents are entitled. In short, none of the grounds for appeal have any merit and in my view, the present application is yet another attempt by the applicant to prevent the enforcement of the arbitration award issued in favour of the respondents.

[7] In my view, another court would not come to a different conclusion on the same facts. The application for leave to appeal thus stands to be dismissed. Finally, there is no reason to deny the respondents the costs that they have incurred in opposing this application. The applicant's conduct, in seeking further delays of the matter on the basis of the unavailability of a legal representative, is consistent with the pattern of seeking to avoid the enforcement of the arbitration award in question, and deserve sanction.

I make the following order:

1. The application for leave to appeal is dismissed, with costs.

Andre van Niekerk
Judge

REPRESENTATION

For the applicant:

For the respondent:

Labour Court