



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JR 1380/20

In the matter between

STADIUM FILLING STATION (PTY) LIMITED

Applicant

and

JOHAN STAPELBERG N.O

First Respondent

**DISPUTE RESOLUTION CENTER,
NORTHERN REGION**

Second Respondent

SENKY RAISIBE MATSHATSHA

Third Respondent

Considered: In chambers

Delivered: 03 May 2023

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

SWARTZ AJ

- [1] This is an application for leave to appeal against the judgment and order of this Court handed down on 28 February 2023.
- [2] The applicant filed its application for leave to appeal on 22 March 2023 and its submissions on 4 April 2023. Accordingly the applicant's submissions were filed within the 10 day period as prescribed in paragraph 15.2 of this Court's Practice Manual.
- [3] I have considered both parties' submissions.
- [4] In terms of the *Plascon-Evans* principle¹ the applicant's allegations ought to be rejected on the papers as they are clearly untenable. For the reasons set out in my judgment the applicant's version that Dr Phayane only became aware of the arbitration award (under the second respondent's case number MIPT 25976) on 11 June 2020 is clearly untenable most notably because:
- 4.1 the applicant failed to explain why the default arbitration award (MIPT 25976) was not brought to Dr Phayane's attention, after the applicant admitted that the arbitration award was sent to the correct email address on 2 May 2018; and
- 4.2 the applicant admitted that on 26 September 2019 the Sheriff served a warrant of execution under the second respondent's case number MIPT 27332 on the applicant. The warrant of execution expressly referred to the arbitration award under case number MIPT 25976.
- [5] Having considered the grounds for leave to appeal, I come to the conclusion that the application has no reasonable prospects of success.

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C; *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para 55.

Order

1. The application for leave to appeal is refused.
2. There is no order as to costs.

S. Swartz

Acting Judge of the Labour Court of South Africa