



**REPUBLIC OF SOUTH AFRICA**

**IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH**

**JUDGMENT**

Not Reportable

Case no: P501/13

In the matter between

**NATIONAL UNION OF MINeworkERS OBO MAJEBE**

**Applicant**

and

**CIVIL & GENERAL CONTRACTORS**

**Respondent**

**Heard: 12 February 2015**

**Delivered: 20 November 2015**

**Summary: The prescription Act applies to arbitration awards issued in terms of the LRA. Filing a review application does not interrupt the running of prescription of an award issued before 1 January 2015.**

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**JUDGMENT**

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Lallie, J

- [1] The applicant launched this application seeking an order to have an arbitration award issued by the Commission for Conciliation Mediation and Arbitration ("the CCMA") made an order of court in terms of section 158 (1) (c) of the Labour Relations Act 66 of 1995 as amended ("the LRA"). The application is opposed by the respondent.
- [2] Most material facts of this matter are not in dispute. Its factual background is that the individual applicant, Mr Majebe ("Majebe") was employed by the respondent. Pursuant to his dismissal on 8 December 2006, he referred an unfair dismissal dispute to the CCMA which, in an award dated 19 June 2007, found his dismissal substantively unfair and ordered the respondent to reinstate him and pay him in an amount of R13 251-60 in "back pay". The respondent was ordered to reinstate Majebe within 7 days and pay the amount of R13 251-60 within 21 days of being notified of the award.
- [3] In August 2007, the respondent launched an application to have the arbitration award reviewed and set aside. Owing to the respondent's delay in the prosecution of the review application, the applicant's attorneys asked the respondent's attorneys on 26 March 2008, to indicate the respondent's intention with regard to the review application. The party's attempts to reconstruct the record which was of very poor quality were unsuccessful. The applicant submitted that its attorneys' letter of 30 May 2013, informing the respondent's attorneys that no further steps would be taken in respect of the review application and demanded compliance with the arbitration award was disregarded. On 14 January 2014, the applicant filed the present application seeking an order making the arbitration award an order of court.
- [4] The respondent's basis for opposing the application was that the award dated 19 June 2007, had prescribed and not capable of being made an order of court. It sought an order dismissing the application with costs. The applicant denied that the award had prescribed.
- [5] When this matter was argued, the Labour Court was divided on whether arbitration awards were susceptible to prescription and how the Prescription Act 68 of 1969 ("the Prescription Act") applied to them. The applicant followed the

school of thought which espouse the view that arbitration awards do not prescribe and that this court is not obliged to apply the Prescription Act in instances where grave injustice will result. It was further argued that prescription is not applicable to reinstatement orders. A further argument that the applicant sought to rely on was that filing a review application interrupts the running of prescription which does not necessarily run from the date of the award. The applicant sought to rely on section 145 (9) of the LRA which was introduced by the 2015 amendment to the LRA, on the basis that it is a definitive statement of the legislature's intention. The applicant further argued that the respondent's point of prescription should be disregarded as it was not pleaded properly.

- [6] When this matter was argued three applications dealing with prescription were pending before the Labour Appeal Court. In the unreported judgement of *Myathaza v Johannesburg Metropolitan Bus Service (SOC) Ltd t/a Metrobus; Mazibuko v Concor Plant; Cellucity (Pty) Ltd v CWU obo Peters* under case number JA122/14 and delivered on 6 November 2015 the issue of prescription in relation to arbitration awards was enunciated. I will consider the submissions and arguments before me against the findings in *Myathaza (supra)* in determining the issue of prescription. Contrary to the view expressed in some judgments the applicant sought to rely on, the court found that prescription is based on considerations of fairness and equity as the concepts do not apply to one party only but to all parties including employers and employees. It expressed the view that arbitration awards made under the LRA meet the definitional criteria of a 'debt' as contemplated in the Prescription Act because they create an obligation to pay or render to another, or to do something, or to refrain from doing something. It found that arbitration awards pertaining to unfair dismissals, in which compensation and/or reinstatement, with or without back pay constitute "debt" as contemplated in the Prescription Act. The court held that in the absence of an Act of Parliament providing otherwise (the court found none existed), a three year prescriptive period is applicable to arbitration awards.

- [7] The court based its finding on when prescription of an arbitration award begins to run on section 12 (1) of the Prescription Act which provides that it commences as soon as the debt is due. The court referred with approval to *Uitenhage Municipality v Malloy*<sup>1</sup> in finding that it is due 'when the time arises for the performance by the date of the obligation...' It was found that the inception of prescription depends on the wording of the award. The award stipulate that the respondent should reinstate the applicant within seven days and pay the amount due to Majebe in terms of the award within 21 days of being notified of the award. Prescription of Majebe's reinstatement commenced seven days from 19 June 2007 and for the payment of the amount due, 21 days from 19 June 2007. The respondent's debt arising from the award therefore prescribed in July 2010.
- [8] The applicant's argument that the latest amendment to the LRA introducing section 145 (9) which provides that a review application interrupts the running of prescription to fortify the view that the position in the amendment was always the intention of the legislature was rejected by the court. In reaching the finding, the court relied on section 15 (1) of the Prescription Act which provides that a review application does not suspend the running of prescription. The respondent's view that section 145 (10) which was introduced by the same amendment provides that section 145 (9) applies to arbitration awards issued after 1 January 2015, the commencement date of the amendments is correct. The court expressly stated that the review is not a bar to the bringing of an application to make an award an order of court. The filing of the application to review and set aside the arbitration award which the applicant seeks this Court to make an order of court did not interrupt the running of prescription.
- [9] The arbitration award was issued on 19 June 2007 and the respondent was ordered to comply with it within 21 days. Prescription commenced on the 22<sup>nd</sup> day from the day on which the award was issued. The award therefore prescribed three years thereafter in July 2010. Prescription was not interrupted by the filing of the review application. When the application at hand was filed on 14 January 2014 the arbitration award had prescribed.

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<sup>1</sup> 1998 (2) SA 735

[10] The respondent sought a costs order against the applicant. In view of the respondent's contribution to the delay which led to the prescription of the award, granting a costs order will not be appropriate.

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

11.1 The application is dismissed.

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Lallie J

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Grogan

Instructed by Wesley Pretorius & Associates

For the Respondent: Advocate Grobler

Instructed by Bowes, Mcdougall Inc

LABOUR COURT