



IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case No: P282/09

In the matter between:

ARGENT STEEL GROUP (PTY) LTD t/a

SENTECH INDUSTRIES

Applicant

and

NUMSA obo PIET AND 3 OTHERS

First Respondent

SHERIFF TP MALGAS N.O

Second Respondent

Heard: 4 November 2016

Delivered: 3 November 2017

Summary: The applicant may not rely on the Prescription Act 68 of 1969 to have a writ of execution set aside because the Act does not apply to arbitration awards issued in terms of the Labour Relations Act 66 of 1995.

JUDGMENT

LALLIE J

Introduction

- [1] In this application the applicant seeks an order mainly in the following terms:
- '1.1 Setting aside the writ of execution and warrant issued from the above honourable court under case number P282/09 (Motor Industry Bargaining Council case number MICT3963) dated 10 June 2016.
 - 1.2 Directing that the moveable assets of the applicant which have been attached, being 2 x Atego 8 ton vehicles; and 1 x 3 ton Toyota Dyna, be released and that the Applicant have immediate access thereto.
- [2] The salient facts of this matter are that the individual first respondents (respondents) were employed by the applicant until their dismissal for misconduct in 2007. They referred an unfair dismissal dispute to the Motor Industry Bargaining Council (MIBCO). On 5 August 2008 MIBCO issued an arbitration award in which their dismissal was found to be unfair and the applicant ordered to reinstate them and pay them an amount of R119 147.28. The award was certified in terms of section 143(3) of the Labour Relations Act 66 of 1995 (the LRA). In June 2009, the applicant launched an application to have the award reviewed and set aside. On 19 February 2010 this court granted an order staying the enforcement of the award pending the outcome of the application for review. In a letter dated 1 December 2015 the applicant advised the respondents that their claim had prescribed and that it would no longer be pursuing the review application. On 10 June 2016 a writ of execution was issued against the applicant based on the certified arbitration award. After the second respondent had attempted to execute the writ on 27 June 2017, the applicant and first respondent reached an agreement that the applicant's property would neither be attached nor removed but the assets would only be recorded. A discussion over the validity of the writ ensued with the applicant submitting that the award has prescribed and the respondents denying the prescription.

- [3] On 28 October 2016 the applicant launched the application at hand. It was argued on 29 November 2016. The applicant's attack on the validity of the writ of execution is two pronged. The first is that it is in contempt of the court order of 19 February 2010 which stayed the enforcement of the award pending the outcome of the review application. It is common cause that the applicant, through its attorneys informed the respondent's attorneys in a letter dated 1 December 2015 that it was no longer pursuing the review application. When the writ was obtained on 10 June 2016 the review application was no longer pending and it came to finality on 1 December 2015 when the applicant communicated to the respondents its intention not to pursue it. It is common cause that the applicant took no steps to pursue the review application after 1 December 2015.
- [4] After this matter had been argued the Constitutional Court handed down its judgment in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Ltd t/a Metro Bus & Others*¹ in which it held that the Prescription Act 68 of 1969 does not apply to arbitration awards issued in terms of the LRA. Arbitration awards therefore do not prescribe. The applicant conceded that based on the Myathaza decision (supra) the respondent's claim in terms of the monetary amount in the award has not prescribed.
- [5] The respondent sought a costs order against the applicant. It was argued on behalf of the applicant that the costs order should not be granted because the applicant acted within its rights and in term of relevant jurisprudence when it raised prescription. Section 162 LRA requires that the law and fairness be taken into account when a decision on the payment of costs is made. When the applicant launched this application it relied on the decision of the Labour Appeal Court in which it was held that the Prescription Act applied to arbitration awards. Jurisprudence changed after the application was argued. Fairness does not justify a costs order against the applicant as the applicant could not have foreseen that jurisprudence would change shortly after this matter was argued.

¹ (2017) 38 ILJ 527 (cc)

[6] The applicant has not established valid grounds for the setting aside of the write of execution issued on 10 June 2016. Its application cannot succeed.

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

Order:

1. The application is dismissed.
2. No order is made as to costs.

Z Lallie

Judge of the Labour Court

Appearances

For the Applicant: Advocate Euijen SC

Instructed by Goldberg & De Villiers Inc

For the Respondent: Mr Niehaus of Minaar Niehaus Attorneys

LABOUR COURT