

SOUTH AFRICA / JUDGMENT

Kammies v Enforce Security Systems (Pty) Ltd (P54/18) [2021]

ZALCPE 15 (8 December 2021)

[2021] ZALCPE 15

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P54/18

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IN

THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

Not

Reportable

CASE

NO: P54/18

In

the matter between:

ISMAEL

KAMMIES

Applicant

and

ENFORCE

SECURITY SYSTEMS (PTY) LTD

Respondent

Heard:

21 July 2021

Delivered:

This judgment was handed down electronically by circulation to the Applicant and the Respondent's Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing- down is deemed to be 12h00 on 8 December 2021.

JUDGMENT

LALLIE, J

- [1] The applicant was employed by the respondent until he was dismissed on 4 June 2014. He challenged the fairness of his dismissal at the Commission for Conciliation, Mediation and Arbitration (the CCMA) which on 8 February 2015, issued an arbitration award in which the applicant's dismissal was found to be substantively and procedurally unfair. The CCMA ordered the respondent to reinstate the applicant with effect from the date of his dismissal, 4 June 2014 and pay him an amount of R59 941.69 which is equivalent to remuneration he would have earned between the date of his dismissal and 11 February 2015 the day preceding the one he was required to report for duty in terms of the reinstatement order.
- [2] The applicant launched the present application on 14 February 2018 seeking the following relief:

- '1. That the Arbitration award dated 8 February 2015 marked annexure "IK1" be made an order of court in accordance with s158(1)(c) of the Labour Relations Act.
2. Directing the Respondent to retrospectively reinstate the Applicant as from 16 February 2015 as stipulated in the Arbitration award, and to effect payment as from 16 February 2015.
3. Directing the Respondent to pay the Applicant an amount of R56 941, 69 as stipulated in the Arbitration award.
4. Directing the Respondent to pay the Applicant in terms of the Applicant's contractual entitlement in the amount of R242 130.00.
5. Directing the Respondent to pay the Applicant for the tender to his services contractually, in terms of the Arbitration award, as of the date of this Application to the date of the Respondent complying with the award and in terms of the Applicant's contractual tender and entitlement. This amount will be provided on the date of hearing.'

The application is opposed by the respondent mainly on the basis that the applicant was employed on a fixed term contract which expired on 30 November 2015 when the respondent lost the MTN contract to which the applicant's contract was linked. The respondent admitted its indebtedness to the applicant in the amount of R65 457.38 which covers remuneration he would have earned from the date of dismissal to the date of the alleged expiry of his fixed term contract on 30 November 2015.

- [3] In *SA Post Office Ltd v CWU obo Permanent- Part-Time Employees*[1] the circumstances in which an order making an arbitration award an order of court were found to be the following:

'[21] ... What all this means is that before the Labour Court will grant an order sought in terms of section 158(1)(c) of the LRA it must be satisfied that, at the very least:

- "(i) the agreement, is one which meets the criteria set in s 158(1)(c) read with section 158(1A) of the LRA, and if it is an award, that it satisfied the criteria set in section 142A of the LRA;
- (ii) that the agreement or award is sufficiently clear to have enabled the defaulting party to know exactly what it is required to do in order to comply with the agreement or award; and,
- (iii) there has not been compliance by the defaulting party with the terms of the agreement or the award.

- [22] Once the Labour Court is satisfied with all the above then it must, nevertheless, exercise its discretion whether to grant or refuse the order. In exercising the discretion, the Court must take relevant facts and circumstances into account, such as are necessary to satisfy the demands of the law and fairness. Necessarily, each case must be decided on its own facts and circumstances. There is, otherwise, no closed list of factors to be taken into account. A relevant factor is the time it took the party seeking the relief to launch the application to make the settlement or award an order of court. The Labour Court may, for example, be more reluctant to make an award for reinstatement of employees an order of court where the employees unreasonably delayed in seeking the enforcement of the award, yet a delay in years in seeking to make an award for payment of a sum of money may not be grounds for refusing to make the award an order of Court. Finally and most crucially, it must be remembered that the purpose of making an agreement or award an order of the Labour Court is to compel its enforcement, or enable its execution and not for some other purpose.'
- [4] The applicant has proved that an arbitration award was issued in his favour by the CCMA on 6 February 2015. The arbitration award is couched in clear terms which made it possible for the respondent to be aware of what it was required to do in order to comply with it. It is common case that the respondent did not comply with the award. The purpose of section 158(1)(c) as it has been re-iterated in SA Post Office (supra) is to compel the enforcement of an award or enable its execution and not for any other purpose. It is clear from the relief that the applicant seeks that he wants more than being enabled to execute the award. He is therefore attempting to use section 158(1)(c) to obtain relief which exceeds its purpose. The LRA is prescriptive and provides a procedure for enforcement of awards in section 143. All the other prayers other than the one for making the arbitration award an order of this court fall outside the scope of this application.
- [5] In exercising the discretion whether to grant the order making the arbitration award an order of this court I have taken into account that the relief granted in the award is reinstatement. The arbitration award was issued on 8 February 2015 and this application was filed 3 years later on 14 February 2018. In determining the excessiveness of the delay, I have taken into account that in February 2015 the respondent refused to reinstate the applicant and informed him that it had taken the award on review. As review applications are in their nature urgent, the applicant provided no reasons for the delay from the date the respondent refused to reinstate him and the date of the filing of this application. The delay is unreasonably long for purposes of an application in terms of section 158(1)(c) of the LRA.

Nothing precludes the applicant from enforcing the award in terms of section 143 of the LRA. The law and fairness therefore require that the application be refused.

[6] I could find no reason both in law and fairness to grant a costs order against the applicant.

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

Order:

1. The application in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 is dismissed.
2. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Van Rensburg of Wikus Van Rensburg Attorneys

For the Respondent: Advocate Lambrechts

Instructed by:

Brown Braude & Vlok Attorneys

[1]

[2013] 12 BLLR 1203 (LAC) at para 21 and 22.

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Prepared on 10 October 2026 · Esheria