

SOUTH AFRICA / JUDGMENT

Pandazis v Nyathi and Others

(J789/09) [2009] ZALC 147; (2010) 31 ILJ 721 (LC) (29 April 2009)

[2009] ZALC 147

COURT
Labour Court

BEFORE
Francis

CASE / FILE NUMBER
J789/09

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: J789/09

In the matter between:

THEO PANDAZISApplicant

and

TAXIWG BHEKI NYATHI1st Respondent

THE SHERIFF, GERMISTON NORTH2nd Respondent

THE REGISTRAR OF THE ABOVE

HONOURABLE COURT3rd Respondent

REASONS FOR THE ORDER MADE

FRANCIS J

1. On 28 April 2009, I dismissed an urgent application and said to the applicant that I would provide reasons for the order that I made. These are my reasons.
2. The applicant brought an urgent application to set aside a warrant of execution (writ) issued by this Court on 24 March 2009. The amount claimed in the writ is R4 000.00.

3. The applicant states in his founding affidavit that he became aware that a writ had been issued against him or that an order of judgment was granted against him on 14 April 2009 when he was informed by the second respondent (the sheriff) that the first

respondent had obtained an order against him at the Commission for Conciliation, Mediation and Arbitration (the CCMA) arising out of arbitration proceedings. This came as a complete surprise to him as he had not received notification of arbitration proceedings at all, nor had any notice been served on him. Had he known about the arbitration proceedings, he would have attended such proceedings and would have opposed the said dismissal since he has an absolute defence to the first respondent's claim for unfair dismissal

namely that he did not dismiss him.

4. The applicant states further that the sheriff came to his house on 15 April 2009. He told the sheriff that he intended to apply to the CCMA to rescind the judgment granted against him. He told the sheriff that he would supply him with a cheque for the full amount but that such cheque had to be held by the sheriff in trust and not be paid to the first respondent pending the outcome of the application for rescission of judgment which he intended to launch at the CCMA. He issued the sheriff with a cheque and went on to launch the rescission application at the CCMA. He only became aware that the filing of a rescission application does not stay the enforcement of an award after he was informed by the sheriff about this on 16 April 2009. He consulted with his attorney on 17 April 2009 and had also stopped payment of the cheque that he gave the sheriff. A new cheque was issued to his attorney to keep in trust pending the outcome of the rescission application.

3. The applicant states in his founding affidavit that he became aware that a writ had been issued against him or that an order of judgment was granted against him on 14 April 2009 when he was informed by the second respondent (the sheriff) that the first

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the enforcement of an award after he was informed by the sheriff about this on 16 April 2009. He consulted with his attorney on 17 April 2009 and had also stopped payment of the cheque that he gave the sheriff. A new cheque was issued to his attorney to keep in trust pending the outcome of the rescission application.

5. The urgent application was filed on 21 April 2009 and set down for 28 April 2009. It is unopposed. The application stands to be dismissed on several basis. The applicant has clearly not laid a basis for the relief that he is seeking. What the applicant is seeking is an order to set aside the writ of execution. The applicant is not seeking an order to stay the writ pending the

outcome of the rescission application. He is seeking final relief. It was necessary for the applicant to have placed facts before this court to have the writ set aside. This would involve some irregularities or some permissible grounds to have it set aside.

None of these have been shown to exist.

6. At best for the applicant it might be argued that he is seeking an order to stay the writ pending the outcome of the rescission

application. The provisions of section 145 (3) of the Labour Relations Act 66 of 1995 (the Act) which states that “the

Labour Court may stay the enforcement of the award pending its decision” are not applicable in this matter. This would only apply in a case where there is a review application pending before this Court. It does not apply to cases where there are rescission applications pending at the CCMA or the relevant bargaining council.

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Labour Court may stay the enforcement of the award pending its decision” are not applicable in this matter. This would only apply in a case where there is a review application pending before this Court. It does not apply to cases where there are rescission applications pending at the CCMA or the relevant bargaining council.

7. For the applicant to succeed he would have to make out a case in terms of section 158(1)(a)(i) or (ii) of the Act which deals with urgent interim relief and interdicts. A requirement for an interdict is that the applicant has no adequate alternative remedy available to him. Mr Fuchs who appeared for the applicant contended that since there is an order in terms of section 143 of the Act, the applicant could not claim back the sum of R4 000.00 from the first respondent should it succeed with the rescission application. I do not agree with the applicant’s contentions. There is simply no order made in this matter. Section 143 deals with the effects of arbitration awards and with the enforcements thereof. Nothing prevents the applicant from claiming the amount from the first respondent if its rescission application before the CCMA should succeed. There is no contention made that the first respondent is a person of straw and that he cannot pay back the amount to the applicant. The applicant clearly has an adequate alternative remedy available to him. The applicant has in any event not dealt with the requirements for an interdict in its founding papers and has not made out such a case.

8. The application is clearly not urgent or if it is urgent, the urgency was self created. It is clear from the applicant’s

founding affidavit that the applicant knew about the writ on 14 April 2009 when he was so informed by the sheriff. The sheriff

called at the applicant’s premises on 15 April 2009 when a cheque was issued to the sheriff for R4 000.00 pending an

application to be brought with the CCMA to have the award rescinded. The applicant received a letter from the sheriff on 16 April 2009 acknowledging receipt of the rescission application and advised him that the rescission application does not stay the process and that the sheriff intended to deposit the cheque and pay out the money to the first respondent once the effects had been cleared. It was then that the applicant sought advice from his attorneys of record. He was advised that he would have to launch this application and an appointment was set for 17 April 2009. He stopped payment of the cheque issued to the sheriff and paid same to his attorney’s

trust account pending the outcome of this application and his application at the CCMA. There is simply no explanation tendered why if this matter was so urgent that it could not be enrolled for a hearing in the week commencing 20 April 2009. The urgency in this matter was self created.

7. For the applicant to succeed he would have to make out a case in terms of section 158(1)(a)(i) or (ii) of the Act which deals with urgent interim relief and interdicts. A requirement for an interdict is that the applicant has no adequate alternative remedy available to him. Mr Fuchs who appeared for the applicant contended that since there is an order in terms of section

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9. It was for these reasons that I dismissed the application. FRANCIS J JUDGE OF THE LABOUR COURT OF SOUTH AFRICA FOR THE APPLICANT : ATTORNEY L FUCHS FOR RESPONDENTS : NON APPEARANCE DATE OF HEARING : 28 APRIL 2009 DATE OF ORDER : 28 APRIL 2009 DATE OF REASONS : 29 APRIL 2009

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JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR THE APPLICANT : ATTORNEY L FUCHS

FOR RESPONDENTS : NON APPEARANCE

DATE OF HEARING : 28 APRIL 2009

DATE OF ORDER : 28 APRIL 2009

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