

SOUTH AFRICA / JUDGMENT

South African Post Office SOC Ltd v Commission for Conciliation, Mediation and Arbitration and Others (JR254/16) [2016] ZALCJHB 200; (2016) 37 ILJ 2140 (LC) (27 May 2016)

[2016] ZALCJHB 200

COURT

Labour Court Johannesburg

BEFORE

Lagrange

CASE / FILE NUMBER

JR254/16

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case No: JR 254/16

In the matter between:

SOUTH AFRICAN POST OFFICE SOC LTD Applicant and COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION First Respondent NOMUSA MBHELE N.O Second Respondent
COMMUNICATION WORKERS UNION obo THOMAS MOKWENA & 34 OTHERS Third Respondent
THE SHERIFF CENTURION-EAST Fourth Respondent

Heard: 24 May 2016

Delivered: 27 May 2016

Summary: (Rule 8(10) read with High Court rule 6(12)(c) – reconsideration of final urgent order
granted in the absence of a party – stay of writ – security- state entity)

judgment

LAGRANGE J

Introduction

- [1] The parties in this application are referred to by their citation in the main application to stay the execution of a writ.
- [2] On 11 May 2016, Prinsloo J granted a final order on an urgent basis staying a writ of execution pending the finalisation of the review application. The third respondent has applied for reconsideration of that order relying on rule 8 (10) of the Labour Court rules allowing a party to anticipate a return date in a matter. More particularly in argument, the third respondent relied on Rule 6(12)(c) of the uniform rules of the High Court which states:

“A person against whom an order was granted in his absence in an urgent application made by notice set down the matter for reconsideration of the order.”

- [3] The original application had been postponed from 5 to 11 May 2016 to ensure that the sheriff was joined as a respondent. When the matter was re-enrolled on 11 May 2016, there were two matters involving the applicant in the review proceedings in different courts. The third respondent's attorney of record attended court but misread the court roll and waited for the application to be called in the court he attended, namely court 4. In fact, as it turned out the matter in which he was appearing was not the one enrolled in the court 4 roll but on the roll of court 3. While he was waiting in court 4 he was informed by his client that Prinsloo J had handed down judgement in his matter in his absence.
- [4] Rule 11(3) of the Labour Court rules specifically provides that if a situation which is not provided for in the rules arises in any proceedings the court may adopt any procedure deemed appropriate in the circumstances. In applying this rule the Labour Court has adopted the rules of the High Court from time to time.[1] There is no equivalent of the High Court rule 6(12)(c) in Rule 8 of the Labour Court rules dealing urgent applications. Clearly, the High Court provision was designed to allow an expeditious rescission of an order granted on an urgent basis to avoid the party against whom it was made from having to bring a rescission application on notice of motion. No doubt, if there is no adequate explanation provided for the party's absence at the original proceedings that will play a part in the deliberations of the court reconsidering the matter.
- [5] In any event, there is no reason why the Labour Court should not entertain applications to reconsider urgent orders on the basis provided for in the High Court rule. However, this does raise a difficulty with the application brought by the third respondent. The specific relief sought was to “anticipate the interim order” of 11 May 2016 with a view to discharging it. Neither the notice of motion nor the supporting affidavit disclosed the third respondent's intention to bring the matter back to court with a view to reconsidering the order in terms of Rule 6(12)(c). It is patently clear that rule 8(10) which was the

only rule mentioned in the application deals solely with the anticipation of the return day in the context of an interim order

being granted. Accordingly, the applicant could not have anticipated the true nature of the application it was called upon to meet.

- [6] The order made by Prinsloo J was final in nature and there simply was no 'return day' to anticipate. Accordingly, the applicant could not have anticipated that it would be called upon to argue the substance of an application to reconsider the matter and understandably believed it was entitled to ask for the dismissal of the application based on the fact that there was no final order pending and that in effect the application was misconceived. It was only in the third respondent's supplementary heads of argument handed up in court when the matter was argued that the third respondent's reliance of Rule 6(12)(c) was raised and advanced as the true basis of the application.
- [7] The purpose of a notice and a supporting affidavit is to set out the basis of the case the respondent party has to meet. When the notice is couched as the anticipation of a non-existent return day, then the application turns out to be a re-consideration of the matter, it is understandable the respondent party should be caught off guard. I am inclined to dismiss the application brought ostensibly under Rule 8(10) because the true legal nature of the application, which was a reconsideration of the matter under a different rule was not disclosed in the third respondent's notice or founding affidavit. It is not simply a question of formality: the nature of an application for anticipation of a return date presupposes that the court made an interim order, whereas an application to reconsider the matter does not.
- [8] It may be so that when a party anticipates a return date and when a party seeks to have an urgent order reconsidered, the substantive

merits of the original application will be under consideration in both instances, albeit that under Rule 6(12)(c) the court can consider both interim and final relief[2], whereas in anticipating a return date, a party is necessarily only dealing with final relief. However, where the notice of the application and the founding affidavit articulate a case premised on anticipating a return date of an order that was not granted on an interim basis, the responding party understandably would not see the need to respond except by way of arguing that the application is fundamentally misconceived and would not see the need to enter the merits of the matter by way of a replying affidavit.

- [9] In the circumstances, it would be grossly unfair in my view for the court to enter the substantive merits of the matter when such an enquiry would not have been required given the misconceived nature of the application. However, in dismissing this application which is couched as relief under Rule 8(10), it does not prevent the applicant seeking to have the matter reconsidered under notice as contemplated under Rule 6(12)(c) of the High Court rules. At least when faced with a properly framed application of that sort, the applicant could take a view whether or not to file a replying affidavit in defending the matter.

[10] Without making any assessment of the substantive merits of the matter, I am satisfied that the third respondent ought to have made the real nature of its application clear, in which event the court would have been able to deal with the matter confident in the knowledge that the applicant party was in court with proper foreknowledge of the real nature of the application it was required to meet. In these circumstances, I see no reason why the third respondent should not bear the applicant's wasted costs of the day.

Order

[11] The application under Rule 8(10) is dismissed with costs.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES APPLICANT: G.Mashigo instructed by Madhlopa Inc THIRD RESPONDENT: M.M. Baloyi for Baloyi attorneys.

[1] See e.g Van Rooy v Nedcor Bank Ltd [1998] 5 BLLR (LC) and Ganga v St John's Parish (2014) 35 ILJ 1294 (LC).

[2] See Van Loggerenberg et al, Erasmus – Superior Court Practice, Original Service, 2015, at D1-87.

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