

SOUTH AFRICA / JUDGMENT

Van Den Heever v Makgakantshe Mining Commodities (Pty) Ltd and Others (JR2609/22) [2025] ZALCJHB 7; (2025) 46 ILJ 1278 (LC) (16 January 2025)

[2025] ZALCJHB 7

COURT

Labour Court Johannesburg

BEFORE

C Orr

CASE / FILE NUMBER

JR2609/22

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JR2609/22

In the matter between:

ADELE
VAN DEN HEEVER
Applicant
and
MAKGAKANTSHE
MINING COMMODITIES (PTY) LTD
First
Respondent
GLENCORE MERAPE
VENTURE EASTERN
CHROME
MINES
Second
Respondent
FIRST
NATIONAL BANK
Third
Respondent

Heard:

20 November 2024

Delivered:

16 January 2025

JUDGMENT

ORR, AJ

Background

[1] In this application, the applicant seeks the following orders:

- 'a) Hearing this matter on an ex-parte basis/executing non-service on the First Respondent;
 - b) That the provisions of Rule 45(8) of the Rules of the High Court be invoked and applied to this matter;
 - c) That the Court direct the CCMA to amend/reissue the Applicant's writ of Execution/ Enforcement ... as issued by the CCMA to include/reflect the vendor number for the attachment of any invoices issued to the Second Respondent;
 - d) That the Court direct the CCMA to amend/reissue the Applicant's writ of Execution/ Enforcement ... as issued by the CCMA to include/reflect the bank account details of the First Respondent;
 - e) That the sheriff be ordered/directed to effect an attachment of the invoices under the vendor number and bank account/s of the First Respondent and to take into execution sufficient proceeds in the First Respondent's bank account/s and invoices to be paid out by the Second Respondent and Third Respondent.'
- [2] The application is opposed only by the second respondent (Glencore). As is apparent from the relief sought in the notice of motion, no service has been effected on the First Respondent (Makgakantshe). The third respondent has indicated that it does not oppose the application.

[3] The background facts, which are all common cause on the papers before me are as follows:

3.1. On 26 September 2019, the CCMA issued an award in terms of which Makgakantshe was found to have unfairly dismissed the applicant and was ordered to pay her an amount of R133 000 in compensation;

3.2. The applicant applied to have the award certified as contemplated in section 143(3) of the Labour Relations Act[1] (LRA). The certification was issued by the CCMA on 6 November 2019 along with an enforcement order which instructed the Sherriff to attach and take into execution the movable goods of Makgakantshe to the value of the award;

3.3. The sheriff attempted to execute on the certified award but found no property which could be attached at the given address. A nulla bona return was issued on 14 October 2022;

3.4. The applicant's attorneys approached the CCMA seeking to amend the enforcement order to reflect Makgakantshe's vendor number in order to attach invoices submitted by Makgakantshe to Glencore. These attempts were unsuccessful. On 5 October 2020, Ben Baloyi of the CCMA sent an email to the applicant's attorneys stating as follows:

'The CCMA does not have the jurisdiction to issue warrant of execution to attach invoices. We can only help in means of attaching the moveable goods of the respondent not documents like invoices.'

3.5. As result, the current application was brought.

[4] After argument was heard in this matter and as I was preparing this judgment it appeared to me that given the relief sought required me to make orders directly against the CCMA and given that the CCMA was not cited as a party, an issue of non-joinder may arise. I accordingly requested the parties to make written submission in this regard. I received submissions from both the applicant and Glencore, and I am grateful for the assistance of the parties in this regard.

[5] Before addressing the issue of joinder I can dispose of prayer a sought in the notice of motion. No service of this application has been effected on Makgakantshe. The applicant explains that to do so will in all probability defeat the object for which the application was brought. Given the refusal of Makgakantshe to comply with the arbitration award thus far there is a strong likelihood that knowledge of this application may cause Makgakantshe to change its banking details and/or vendor numbers. I am satisfied that this has been established, and I accordingly rule that this matter may proceed without any service being effected on Makgakantshe.

Joinder

[6] The principles of joinder are well established. In *Matjhabeng Local Municipality v Eskom Holdings Ltd and others; Mkhonto and Others v Compensation Solutions (Pty) Ltd*[2], the Constitutional Court stated:

'[91] At common law, courts have an inherent power to order joinder of parties where it is necessary to do so even when there is no substantive application for joinder. A court could, mero motu, raise a question of joinder to safeguard the interest of a necessary party and decline to hear a matter until joinder has been effected. This is consistent with the Constitution.

[92] The law on joinder is well settled. No court can make findings adverse to any person's interests, without that person first being a party to the proceedings before it.'

[7] As is apparent from what is set out above, the CCMA is of the view that certification of an award in terms of section 143 of the LRA permits only the attachment of movable goods. The applicant holds a contrary view. The applicant is of the view that a certification of an arbitration award in terms of section 143 permits the attachment of incorporeal goods, and that an enforcement order can make provisions to that effect. The order sought from this Court is to direct the CCMA to amend its enforcement order issued in

terms of section 143 to include incorporeal property. The order sought by the applicant would be adverse to the view of the CCMA that it has no power to do so, and would direct the CCMA to act in a manner which it is of the view it is not entitled to do.

[8] On this basis, Glencore argues that the CCMA should have been joined to these proceedings as the interests of the CCMA are directly affected. The applicant contends to the contrary. I must confess that I have had some difficulty in following the applicant's arguments in this regard. The applicant refers to Commission for Conciliation, Mediation and Arbitration v MBS Transport CC and Others[3] a case which dealt with the legal fictions created by the operation of section 143. The case sets out at some length how a legal fiction is created that a certification of an award by the CCMA is to be treated, for the purposes of execution, as if a writ has been issued by the Labour Court even though this is not the case. The Court found that this was done by the legislature in order to circumvent the cumbersome existing enforcement provisions, which required that an arbitration award be made an order of the Labour Court so that a writ could be issued for the attachment of property.

[9] The case does not address the issue before me, which is the CCMA's view that incorporeal property may not be included in an enforcement order issued in terms of section 143 of the LRA and whether this Court should hear the CCMA on this issue before making an order to the contrary.

[10] The applicant's supplementary heads of argument conclude that the CCMA has no jurisdiction to issue or "enforce a writ of execution of this nature" (this nature presumably being a writ to attach incorporeal property) and that the joinder of the CCMA is therefore not necessary. However, this begs the question of why the applicant then seeks an order requiring the CCMA to amend its certification if the CCMA has no powers to do so. I fail to understand how it can possibly be argued that the CCMA should not be joined, and heard on this issue, before an order potentially adverse to its views be made against it.

[11] This is not for a moment to suggest that I accept the CCMA's position in respect of incorporeal property is correct in relation to enforcement orders. Rather they should be joined to be heard on this issue prior to it being decided, because, as the Constitutional Court put it in *De Lange v Smuts NO and Others*[4]:

‘Everyone has the right to state his or her own case, not because his or her version is right, and must be accepted, but because in evaluating the cogency of any argument, the arbiter, still a fallible human being, must be informed about the points of view of both parties in order to stand any real chance of coming up with an objectively justifiable conclusion that is anything more than chance.’

- [12] Having found that the CCMA should be joined as a party in this matter all that remains is for me to decide what orders I should make consequent on this finding. In their supplementary heads of argument, Glencore contend that I can either dismiss the matter for non-joinder or postpone the matter and order that the CCMA be joined in the proceedings. They urge me in either event to dismiss “the relief sought against the second respondent”. However, there is no relief sought directly against Glencore for me to dismiss. Glencore is cited because it has a direct interest in the relief sought not because relief is sought against it. I understand that what Glencore really seeks is a determination, on the merits, of the relief sought by the applicant in prayer c) of the notice of motion as well as prayer e) insofar as it relates to Glencore.
- [13] I am sympathetic to Glencore’s desire to have the question of its invoice numbers disposed of so as not to incur further costs in the proceedings. However, in order to address this issue, on the merits, I would need to make assumptions that the CCMA may issue enforcement orders which include incorporeal property and then determine whether an attachment of vendor numbers falls under the category of incorporeal property which may be attached. Having determined that the CCMA must be heard before it can be decided whether incorporeal property can be referred to in an enforcement order at all, I don’t think it is appropriate for me to make any assumptions in this regard, particularly when this issue is likely to be determined by a Judge other than myself.
- [14] I am of the view that the entire question of whether enforcement orders can include incorporeal property is one of some importance and will almost certainly affect persons beyond just the applicant in this matter. I am accordingly of the view that this matter should be postponed and that the CCMA should be joined as a party.
- [15] As far as costs are concerned, I take Glencore’s point that they have been put to unnecessary costs as a result of the applicant’s failure to join the CCMA as a party. However, I think a determination on costs is premature at this point. Costs will therefore be reserved.
- [16] In the premises, I make the following

orders:

Order

1. This application may proceed without service being effected on the first respondent;
2. The matter is postponed sine die;

3. The CCMA is joined as the fourth respondent in these proceedings;
4. The applicant is directed to effect service of an amended notice of motion, reflecting the CCMA as the fourth respondent, as well as all the existing papers in this matter on the CCMA within ten days of this order;
5. Costs occasioned by the postponement are reserved.

C Orr

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv R Orr Instructed by: Bailie Janke Snyman Attorneys For the Second Respondent: Adv L Bhima Instructed by: Harris Marcus Mahlangu Attorneys

[1] Act 66 of 1995, as amended.

[2] [2017] ZACC 35; 2017 (11) BCLR 1408 (CC) at paras 91 – 92.

[3] [2016] ZALAC 34; [2016] 10 BLLR 999 (LAC).

[4] [1998] ZACC 6; 1998 (7) BCLR 779 (CC) at para 131.

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Prepared on 9 October 2026 · Esheria