IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG/CAPE TOWN

Of Interest to Other Judges

Case No: C1230/2018

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA SOC LTD (PRASA) **Applicant**

and

THE SHERIFF FOR THE DISTRICT OF GOODWOOD **First Respondent**

THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION **Second Respondent**

COMMISSIONER VUSIMUSI LANDAU N.O **Third Respondent**

MDLULI AND 164 OTHERS **Fourth – Further Respondents**

Heard: **21 December 2018**
Delivered: **27 December 2018**

JUDGMENT

TLHOTLHALEMAJE, J

[1] The applicant (PRASA) approached this Court on an urgent basis to seek a *Rule Nisi* staying the writ of execution in respect of an arbitration award issued by the Commission for Conciliation Mediation and Arbitration (CCMA) under case number WECT2826-18 and WECT271-18, pending the outcome of an application for review. PRASA also seeks that the attachment of its property as listed in the inventory complied by the first respondent (Sheriff) and attached to the Notice of Motion be lifted, and further that it be exempted

from providing security in terms of section 145(7) as read with section 145(8) of the Labour Relations Act (LRA).[1] The application was fully opposed with three sets of papers being before the Court. The matter was heard *via* teleconferencing over the recess period.

[2] The background common cause facts are as follows;

2.1 The fourth to further respondents (Employees) had referred a dispute to the CCMA in terms of the provisions of section 198B read with those of section 198D of the LRA. The Employees sought an order declaring them to be deemed permanent employees and to further be awarded financial compensation calculated from 1 April 1995 related to salary differences from the date of the implementation of the provisions of section 195B to the date of arbitration.

2.2 As at the time of the arbitration proceedings, the Employees' employment had been converted into permanent status in accordance with the provisions of section 198B(5) of the LRA since 1 April 2015.

2.3 On 17 July 2018, Commissioner Daniel du Plessis issued an award in terms of which the Employees' employment was deemed to be of indefinite duration since 1 April 2015, entitling them to membership of the applicant's provident fund and bonuses. The Commissioner further ordered PRASA to pay to each of the Employees, the amounts indicated on a spreadsheet in terms of what they had contended was due to them. The total amount due and payable to the individual Employees collectively came to R35 455 140.00.

2.4 The award was certified by the CCMA on 19 September 2018, and was served on PRASA for enforcement by the Sheriff on 24 October 2018. The Sheriff compiled an inventory of movable assets in the amount of R2 040 000.00 including vehicles and 84 train carriages valued at R10 000.00 each.

[1] Act 66 of 1995 (as amended)

2.5 PRASA is an organ of state as defined in section 239 of the Constitution. It is a public carrier providing public transport rail services throughout the Republic including routes in Cape Town. This application in particular affects PRASA's operations in Cape Town.

2.6 PRASA contends that it has 450 rail carriages in use, and already has a shortfall as a consequence of the well-publicised vandalism and burning of its rail carriages in Cape Town. It is subject to the prescripts of the Public Finance Management Act (The PFMA) as well as relevant Treasury Regulations. In this regard, it contends that the provisions of section 66 of the PMFA places restrictions on its borrowing, and/or provision of security, guarantees and other financial commitments.

[3] The application is brought on the basis of 'extreme urgency' as according to PRASA, the Sheriff having attached the said assets, has also indicated that their removal is imminent. It is contended that in the light of the shortfalls already in regards to carriages, a further loss of 84 carriages or 20% of its operating stock would impact negatively on its operations and disable it from relying on ticket sales from commuters to generate cash flow.

[4] PRASA further averred that there is an aspect of public interest related to the matter, in that effective functioning of the Cape Town economy and surrounding areas depend heavily on its ability to transport commuters to and from work. The implications thereof if interim relief was not granted was that 20% of the daily workforce that uses PRASA's services would have to find alternative transport.

[5] The Employees in opposing the application disputed that the application was urgent. They contend that the award having been certified on 17 July 2018, it took PRASA five months to approach the Court for relief, and further that the attack on the underlying cause of action being the review application was not brought on time. In this case, it was also pointed out that the review application was brought more than two months out of time.

[6] The Employees further pointed out that since the attachment by the Sheriff occurred on 24 October 2018, the urgent application was only brought on

18 December 2018 with less than two days notice, when PRASA had ample opportunity between July and November 2018 to engage with them, and in the absence of an agreement, to launch this application.

[7] It was contended that in regards to the public interest in the matter, what the Employees had instructed the Sheriff to attach were other movabables and to leave the train carriages out of the equation; that PRASA's complaints about the impact on its income stream and cash flow as a result of the impending removal of the trains from circulation is mere financial prejudice, which was not a ground of urgency. Ultimately, the Employees' contention is that the application ought to be struck off the roll on account of lack of urgency.

[8] The application having been brought on the basis of 'extreme urgency', PRASA needs to satisfy the requirements set out in Rule 8 of the Rules for the Conduct of Proceedings in the Labour Court[2]. Thus, a party seeking relief on an urgent basis has to set out in the founding affidavit the reasons for urgency, why the relief is sought on an urgent basis and why the Rules of the Court were not complied with.

[9] I accept that in this case, the significant period is between 24 October 2018 when the certified award was served on PRASA for enforcement by the Sheriff, and 18 December 2018 when this application was launched before this Court. PRASA's explanation is that correspondence was sent to the Employees' erstwhile attorneys on 30 October 2018 to request an agreement that the award not be enforced, and further that it be exempted from furnishing security. In the meanwhile it had only filed and served the review application on 30 October 2018. PRASA further contends that the erstwhile

[2] Which provides;

"(1) A party that applies for urgent relief must file an application that complies with the requirements of rules 7(1), 7(2), 7(3) and, if applicable, 7(7).

(2) The affidavit in support of the application must also contain-

(a) the reasons for urgency and why urgent relief is necessary;

(b) the reasons why the requirements of the rules were not complied with, if that is the case; and

(c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Act, the party must provide reasons why a shorter period of notice should be permitted".

attorneys only advised its attorneys of record on 16 November 2018 that they no longer acted for the Employees.

[10] A meeting was then arranged with the third respondent (Commissioner) for 30 November 2018. Further correspondence followed between PRASA's attorneys of record and the CCMA, as the latter had the responsibility of assisting the Employees and acting on their behalf in liaising with and instructing the Sheriff in regards to the enforcement of the award. In between liaising with the CCMA, which in turn had to liaise with the Sheriff, the latter then on 11 December 2018 advised PRASA that his instructions were to remove the attached assets. When a meeting arranged with the CCMA, PRASA's attorneys of record and the Employees failed to materialise on 14 December 2018, it was only on 18 December 2018 that the application was launched.

[11] I accept in this case that PRASA endeavoured to obtain an agreement from the Employees to have the writ of execution stayed prior to approaching the Court. I further accept that even though the award was issued as early as July 2018 and certified on 19 September 2018, PRASA was jolted into action only upon being served with the certified award on 24 October 2018. The facts of this case and the steps taken by PRASA upon being served with the certified award can hardly be said to be dilatory given the implications of the enforcement of the award as already stated elsewhere in this judgment, and I accept that there is no basis for a conclusion to be reached that the extreme urgency claimed by PRASA is self-created.

[12] The principles applicable to and the general approach to adopt when determining whether the writ of execution should be stayed were enunciated in *Gois t/a Shakespeare's Pub v van Zyl & Others* [3]as follows;

> "(a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.

[3] 2011 (1) SA 148 (LC) At para 37

(b) The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.

(c) The court must be satisfied that:

i. the applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and

ii. irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right.

(d) Irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed, *i.e.* where the underlying *causa* is the subject-matter of an ongoing dispute between the parties.

(e) The court is not concerned with the merits of the underlying dispute-the sole enquiry is simply whether the *causa* is in dispute."

[13] In this case, it was common cause that there is a review application pending before the Court. An application for condonation for the late filing of the review application has also been filed. The prospects of condonation being granted or the review application being successful are matters that this Court should not concern itself, as on the reasoning in *Gois t/a Shakespear's Pub*, it is sufficient that there was a possibility that the *causa* underlying the writ could ultimately be removed. Accordingly, PRASA in this case is not required to satisfy the Court of the existence of prospects of success in the principal dispute, as the very fact of a review application qualifies as an attack on the *causa* underlying the award.

[14] Given the nature of the writ sought to be executed and the consequences of the attachment and removal that may follow, specifically in regards to the crucial assets identified by PRASA, it cannot be doubted that indeed the complaint is not simply confined to financial prejudice to PRASA. More is at stake than mere financial considerations, as it is the ordinary members of the public, who will be severely inconvenienced should the attachment and

removal of the rail carriages be effected. In my view, to argue that other PRASA's assets can be attached that will not inconvenience the public is not a solution. It can therefore hardly be argued that not only PRASA, but ordinary members of the Cape Town community who rely on rail services for daily commute would suffer an injustice should the stay not be granted. In the end, and in this case in particular, it is more the considerations of the interests of justice, and the public interests that ought to determine whether a stay should be granted or not. In my view, and in the light of the circumstances of this case, the interests of justice and the balance of convenience dictates that the stay be granted pending the determination of the review application.

[15] There can further be no dispute that following the service of the certified award and subsequent attachment, PRASA has a well-grounded apprehension that the execution is going taking place at the instance of the fourth – further respondents. This is even so based on the message conveyed to PRASA by the Sheriff on 11 December 2018, that such a removal was imminent. It is appreciated that irreparable harm to PRASA which will result if execution is not stayed, is to a large extent financial in nature. At the same time however, it would be remiss of this Court not to be considerate of other repercussions of the attachment or removals, especially to the members of the public who rely on PRASA's services.

[16] Central to the opposition of this urgent application however is whether PRASA is entitled to be exempted from payment of security in accordance with the provisions of sections 145 (7)[4] and 145 (8)(b)[5] of the LRA in the light of the review application. I accept that in determining whether there is an underlying cause which is sought to be attacked in seeking a stay, a fundamental

[4] Which provides:

'The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).'

[5] Which provides:

'Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must-

(a) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or

(b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.'

consideration in the light of the provisions in question is whether security has been furnished.

[17] This issue, insofar as it concerns organs of the state and similar entities, has received attention in this Court, with various approaches as to whether such entities, which are subject to the PFMA, the MFMA and other Treasury prescripts, should enjoy blanket exemption from providing security. In *Free State Gambling Liquor Authority*[6], it was accepted that upon an interpretation of sections 145(7) and (8) of the LRA, a Court should have discretion as to whether security is to be put up or not. The Court stated that;

> 'Accepting that a proper, constitutionally compliant reading of s 145(7) should allow that the court may decide whether a litigant is compelled to put up security or not, the phrase *'Unless the Labour Court directs otherwise'* in s 145(8), should be read widely to mean that unless the court directs an exemption from the provision of security, or directs that security is to be paid in a lesser amount than those amounts set out in s 145 (8)(a) and (b).'[7]

[18] The Court in *Rustenburg Local Municipality v South African Local Government Bargaining Council and Others*[8] seems to have accepted the above interpretation to the effect that this Court, when exercising its discretion as contemplated by Section 145(3) of the LRA, would be entitled to reduce the quantum of security a review applicant needs to provide, or even dispense with it all together[9]. The Court in *Rustenburg Local Municipality* had however added that;

> "[32] …that a proper case must always be made out by the applicant, in seeking to dispense with the requirement of providing security, which would form the basis upon which such a discretion might be exercised. In simple terms, the default position must be that the Labour Court will require security to be provided as prescribed by Section 145(7) and (8) as a

[6] *Free State Gambling and Liquor Authority v Commission for Conciliation, Mediation and Arbitration and Others; In re: Free State Liquor and Gambling Authority v Motake N.O and Others* (2015) 36 ILJ 2867 (LC)
[7] At para 4.4
[8] (2017) 38 ILJ 2596 (LC); [2017] 11 BLLR 1161 (LC)
[9] At para [31]

condition for any stay or suspension order being granted by the Court, unless the applicant can show good and proper cause in the application why this should not be the case.

[33] Good cause in the context of motivating a departure from the security provisions prescribed in Section 145(7) and (8) would involve a proper explanation why this request should be entertained, with particular emphasis on any material prejudice the applicant may suffer if it is not granted this relief…" (Citations omitted)

[19] The difference in approach however appears to be whether it was suggested in *Free State Gambling* that public entities are automatically entitled to enjoy a free ride out of the provisions of section 145(7) and 145(8) of the LRA by virtue of being hamstrung by the provisions of the PFMA, the MFMA, other Treasury Regulations or similar prescripts. In this regard, the Court in *Rustenburg Local Municipality* appears to take issue with the conclusions reached in *Free State Gambling,* where it was stated that;

> "Given the interpretation accorded to the provisions above, it is only necessary for me to decide whether the court should order the applicant, which is recognized by the National Treasury Department, as a Provincial Government Enterprise and is partly funded from ..government grants" as its financial statements reflect, to pay security in these applications.
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> The applicant is a regulator of the gambling and liquor industries and is accountable to the responsible MEC of the Province. The applicant submits that the provision of security is contrary to the provisions of section 66 of the PFMA, and to comply with those provisions and the requisite treasury regulation would mean that a notice would have to be gazetted by the Minister of Finance each time such a "borrowing" is permitted[6]. It is submitted that this is impractical. I would add that it is also unnecessary.
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> In my judgement, in applications such as these, where the applicant's budget and financial management is governed by the PFMA and Treasury Regulations, and duly authorized averments are made to this effect, the object of providing security is satisfied. The respondent employees in these applications are safeguarded if the awards in question are ultimately upheld, as is an employee in the private sector whose private sector

employer provides a security bond in an application in terms of section 145(7) and (8)"[10]

[20] In response to the above, the Court in *Rustenburg Local Municipality* stated that;

> "[36] In my view, and respectfully, insofar as the judgment in *Free State Gambling* could be construed and applied as a precedent to the effect that public service entities subject to the provisions of the PFMA or related legislation are exempt / exonerated from providing security under Section 145(7) and (8), this would clearly be wrong. I can see no reason why all employers, whether in the public service or the private sector, should not be subject to the same requirement of providing security under Sections 145(7) and (8) of the LRA. In *Pardesi* the Court declined to express a firm view on the correctness or otherwise of the decision in *Free State Gambling*, but did comment as follows on the judgment:
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> > '… The applicant in the *Free State Gambling* case sought exemption from furnishing security on the basis that sections 145(7) and (8) were in conflict with s 66 of the PFMA. The Free State Gambling judgement is not authority for the proposition that all departments of state or other entities subject to the PFMA do not have to furnish security. There are no facts before me that enable me to exercise a discretion to order that security should not be furnished. The default position must therefore apply. That being so, the provisions of s 145 (7) prevail, i.e. the institution of review proceedings does not suspend the operation of the arbitration award.'
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> [37] Insofar as it can be said that the application of Sections 145(7) and (8) is in conflict with the PFMA or the MFMA or any kind of related legislation, where it comes to government departments or municipalities or similar public service entities, then the simple answer is that in terms of Section 210 of the LRA, the LRA must prevail. In *City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd and Others* the Court dealt with the Local Government: Municipal Systems Act, an Act related to the MFMA, and in particular with the contention that it was in conflict with the LRA. The Court specifically relied on Section 210 of the LRA and held:

[10] At para 5 - 6

> '… What it means in this context is that the provisions of the LRA prevail over the Municipal Systems Act in employment matters. …'
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> The same consideration should equally apply to any conflict between the LRA and the MFMA."[11]

And,

> "[41] In the end, the provisions of the PFMA, MFMA and related legislation, cannot serve as a basis to exonerate any government departments or municipalities or like public service entities, as employers, from having to provide security under Sections 145(7) and (8) of the LRA, in order to secure a stay or suspension of the execution or enforcement of an arbitration award, pending a review application brought. If these kind of employers want this Court to exercise a discretion where it comes to the issue or reducing or even dispensing with security when deciding to grant a stay or suspension of the execution or enforcement of an arbitration award, then a proper case must be made out in line with what I have set out in this judgment, above, just like any other employer would have to do."

And,

> "[43] I am not satisfied that the applicant has made out a case justifying the relief that the applicant be exonerated from the providing of security. To simply rely on the provisions of the MFMA which makes it, according to the applicant, hard to provide security, is entirely insufficient. As I have also said, and insofar as the applicant sought to rely on the *Free State Gambling* judgment as a basis for a blanket exoneration, that judgment is in my respectful view, wrong in this respect. There is no reason in this instance why the applicant should not be required to furnish security as stipulated in Section 145(8) of the LRA, as a condition for securing a stay / suspension of enforcement."

[21] In my view, the approach in *Free State Gambling* needs to be understood within the context of the discretion enjoyed by the Court under the provisions of section 145(7) and (8) of the LRA. This is to the extent that there is consensus on the general interpretation of those provisions. The *proviso*

[11] At para 36 - 37

obviously is that a proper case must always be made out by the applicant, in seeking to dispense with the requirement of providing security, which would form the basis upon which such a discretion might be exercised.

[22] I did not therefore understand the approach in *Free State Gambling* to be that state entities are automatically exempt from furnishing security on the grounds of treasury prescripts and regulations, or that they were absolved from the requirement of making out a proper case where the regulations or prescripts were relied upon. This therefore means that organs of the state are not absolved from setting out a proper case where the request for exemption is grounded in the restrictions and limitations imposed by section 66(3)(b) of the PFMA or some other National or Provincial Treasury prescripts or Regulations.

[23] The approach in *Free State Gambling* in my view further needs to be understood within the context of the facts of that particular case, which as in this case, involved restrictions imposed by the regulations and prescripts, the associated practicalities in obtaining the necessary security under those provisions, and the exercise of a court's discretion.

[24] In this case, PRASA's contention was that the amount of compensation in this case was not budgeted for. This can hardly be a surprise given the amount of compensation granted by the Commissioner. Furthermore, PRASA's principal contentions were that its available liquidity was consumed as working capital; that it had no surplus in its current financial budget to meet the unforeseen and extraordinary expense [occasioned by the arbitration award]; that it being an organ of state, it was constrained by the provisions of section 66(3) (b) of the PFMA, which required publication in the Government Gazette by the Minister for the borrowing of *inter alia* that security, or entering into any other transaction that binds or may bind it to any future financial commitment. These were to be preceded by a request to the Minister of Transport, who must first approve the request, which would thereafter be submitted to the Minister of Finance for approval.

[25] The above contentions can hardly be contested, and the practical difficulties identified are indeed real. It would therefore be remiss of this Court to simply ignore those realities when applying its discretion. As I understood the decision in *Free State Gambling,* those were the practical realities that the Court took into account in the exercise of its discretion[12].

[26] I am equally mindful of the fact that the principle of *stare decisis* applies in this Court[13]. I however struggle to find any reason why on the particular facts and set of circumstances in *Free State Gambling*, the approach of the Court which involved an exercise of a discretion as contemplated in section 145(3), (7) and (8) of the LRA, can strenuously be deemed to be *wrong,* as suggested in *Rustenburg Local Municipality*. An attack on a judgment or decision arrived at by this Court as a result of an exercise of judicial

[12] At para [5]

[13] See *Gauteng Province Driving School Assocation & others v Amaryllis Investments (Pty) Ltd & another* (006/2011) [2011] ZASCA 237; [2012] 1 All SA 290 (SCA) (1 December 2011) at para 16, where it was held that;

> "In my view counsel's reliance on the doctrine of *stare decisis* is misplaced. In *Ex Parte Minister of Safety and Security: In Re S v Walters*[2002] ZACC 6; 2002 (4) SA (CC) para 57 Kriegler J explained:
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> > 'The words are an abbreviation of a Latin maxim, *stare decisis et non quieta movere*, which means that one stands by decisions and does not disturb settled points. It is widely recognised in developed legal systems. *Hahlo and Kahn* [Hahlo and Kahn *The South African Legal System and its Background* (1968)] describe this deference of the law for precedent as a manifestation of the general human tendency to have respect for experience. They explain why the doctrine of *stare decisis* is so important, saying:
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> > > "In the legal system the calls of justice are paramount. The maintenance of the certainty of the law and of equality before it, the satisfaction of legitimate expectations, entails a general duty of Judges to follow the legal rulings in previous judicial decisions. The individual litigant would feel himself unjustly treated if a past ruling applicable to his case were not followed where the material facts were the same. This authority given to past judgments is called the doctrine of precedent."'
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> More recently in *Camps Bay Ratepayers Association v Harrison* 2011 (4) 42 (CC) paras 28-30 (footnotes omitted) Brand AJ stated:
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> > 'This argument raises issues concerning the principle that finds application in the Latin maxim of *stare decisis* (to stand by decisions previously taken) or the doctrine of precedent. ... What it boils down to ... is: "certainty, predictability, reliability, equality, uniformity, convenience: these are the principal advantages to be gained by a legal system from the principle of *stare decisis*." Observance of the doctrine has been insisted upon, both by this Court and by the Supreme Court of Appeal. And I believe rightly so. The doctrine of precedent not only binds lower courts but also binds courts of final jurisdiction to their own decisions. These courts can depart from a previous decision of their own only when satisfied that that decision is clearly wrong. *Stare decisis* is therefore not simply a matter of respect for courts of higher authority. It is a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos.'"

discretion, can only imply that the discretion in that case was not exercised judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that the Court had reached a decision which in the result could not reasonably have been made by a Court properly directing itself to all the relevant facts and principles. However, whether that may be the case or not is in any event, a matter for the Labour Appeal Court or any higher court to pronounce on.

[27] In this case, if for example PRASA were to secure funding for the purposes of payment of security, the issue is what are the prospects that such a debt would be repaid within 30 days of the end of this financial year as contemplated in Treasury Regulation 32.1.1(a)? Given the nature of review proceedings in this Court, there are no guarantees for instance, that the pending review might be finalised within the financial year. Besides, the prospects of any aggrieved party seeking leave to appeal if the review does not go its way cannot be discounted. It would thus not only be unrealistic for PRASA to be expected to make such a commitment to make the repayments, but also impractical for it to do so.

[28] The facts of this case are further such that the Employees are still in the employ of PRASA, and I fail to appreciate any prejudice they would suffer if PRASA is exempted from furnishing security. Any prejudice claimed in this case by the Employees ought to be weighed against not only the interests of PRASA to carry its business as a state entity and service provider, but the overall public interests and prejudice to ordinary members of Cape Town, who depend on train services for their daily commute. The interests of the Employees, who are currently employed and receiving a salary, to have the security paid failing which the award would be executed cannot by all accounts, trump over the overall interests of other members of the community, who are entitled to use rail services for their daily commute.

[29] In my view, in exercising its discretion as to whether a party that is an organ of state or similar entity ought to be exempted from these factors and considerations, the Court ought further to be reminded of the basic principle in the staying of writs of execution, which as in this case, involves a

consideration of whether there is an attack on the underlying causa, and whether real and substantial justice requires that the stay be granted or whether injustice would otherwise result. In this case, and in the light of the factors considered herein, there is a review application pending before the Court, and real and substantial justice not only requires that an exemption from payment of security be granted, but also that the enforcement of the award be stayed.

[30] The concerns raised in *Rustenburg Local Municipality*[14] in regards to state departments or other organs of the state or similar entities being granted exemption have merit. These concerns can equally be extended to private entities. If it can be argued that the organs of state or similar entities may be granted an exemption and thereafter do nothing to prosecute reviews for whatever reason, it is equally not uncommon in this Court to find instances in review applications, where negligible amounts of compensation are awarded at arbitration, and only for such awards to be taken on review. The reviewing party, and in most instances, the employer, would gleefully furnished such an amount as security, and basically do nothing to timeously prosecute the review. Equally so, it is not uncommon for private parties to take matters on review, no matter how meritless and frivolous the applications may be, furnish the required security because they or their legal representatives can afford it, and thereafter do nothing. So, the problems or dangers of reviewing parties being dilatory upon furnishing of security or being exempted at all are not confined to state organs.

[14] At paras [39] - [40] where it was held that:

> "The necessity of having to pay security may also serve to motivate review applicants to prosecute their review applications with expedition. After all, and once the review application is disposed of and should the review applicant succeed, it can have its security back. It is common sense that any applicant would want to have this happen as soon as possible.
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> In my view, the objective referred to above may very well be best applied in the case of review applications by government departments or municipalities and related institutions. Often, litigation is conducted by functionaries at lower levels, so to speak, in these entities, without the evaluation of the matter at senior management level. But considering the strict statutory regulation that exists where it comes to paying out money, the requirement of setting security may well bring the matter to the attention of responsible senior management, who would be compelled not to commit such funds unless they are satisfied that the review application has prospects of succeeding. Again, this could potentially reduce the instances of such kind of litigation and may well service to avoid further wasteful expenditure in litigation that has little hope of success."

[31] In my view however, the above concerns are not necessarily insurmountable. The mere fact that a state entity or organ, or even private entity for that matter has been absolved from furnishing security in review proceedings should not be the end of the matter. In other words, the objectives of the provisions of section 145(7) and (8) of the LRA and the mischief they sought to target ought not be circumvented by reviewing parties, who might simply obtain an exemption and fold their arms in regard to the review application. This Court must therefore be vigilant in this regard, and guard against the abuse of its indulgence.

[32] In accordance with the provisions of this Court's Practice Manual, review applications are deemed to be urgent by nature[15], and an applicant is required to ensure that all the necessary papers in the application are filed within 12 months of the date of the launch of the application, and that the registrar of this court is informed in writing that the application is ready for allocation for hearing. There are further consequences provided for in paragraph 11.2.3 and the same 11.2.7, in that failure to comply with the time limits may result in a review application being deemed withdrawn or having lapsed. Furthermore, nothing prevents a reviewing party from approaching the Registrar of this Court to secure an expedited date in respect of a review application.

[33] If the above provisions do not suffice as a deterrent, in considering whether to absolve a state entity from furnishing security, there is further nothing that prevents this Court when exercising its discretion, to further do so with strict conditions, in order to ensure that review applications are timeously prosecuted and finalised. Given the circumstances of this case, I intend to adopt that approach.

[34] I have further had regard to the question of costs and the requirements of law and fairness in that regard. I am of the firm view that a cost order is not warranted in this case.

[35] In the circumstances, the following order is made;

[15] Paragraph 11.2.7 of the Practice Manual

Order:

1. The application is heard as one of urgency in accordance with the provisions of Rule 8 of the Rules of this Court, and the Applicant's failure to comply with the normal time periods, forms and services as contained in Rule 7 is condoned.

2. The Writ of Execution issued by the First Respondent, in conjunction with the Second Respondent, in respect of the arbitration award under case number WECT2826-18 and WECT271-18 is stayed pending the finalisation of the review application brought by the applicant under case number C1037/18.

3. The attachment of the Applicant's property as listed in the inventory compiled by the First Respondent and annexed to the Applicant's Draft Order is lifted.

4. The Applicant is exempt from providing security in terms of section 145 (7) as read with section 145 (8) of the Labour Relations Act 66 of 1995.

5. Orders 2, 3 and 4 as above shall automatically lapse on 1 April 2019, unless the Applicant can satisfy the Court that on that date, it had complied with Rules 7A (6); 7A (8)(a), and where applicable Rule 10 of the Rules of this Court in respect of the review application under Case number C1037/18, and further that a set-down date was obtained from the Registrar of this Court.

6. There is no order as to costs.

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Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	LW Ackerman
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