

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case number: J11/2007

In the matter between:

LANDPAK (PTY) LTD

Applicant

and

WELTHAGEN, ANDRE

First Respondent

SHERIFF FOR THE DISTRICT OF BRITS

Second Respondent

JUDGEMENT

NGALWANA AJ

- [1] This is an application, brought on an urgent basis, for the writ of execution and notice of attachment issued under case number GAPT 8939/2005 to be stayed pending the finalisation of a review application launched under case number JR3230/2006.

- [2] The arbitration award from which the writ sprang was received by the applicant on 15 December 2006, the award itself dated 12 December 2006. On 12 January 2007 the first respondent sought an order under section 158(1)(c) to have the award made an order of court, which was granted on 23 May 2007. There had been no opposition to the section 158(1)(c) application by the applicant. Its Human Resources Manager's explanation is that he was advised by a clerk of this court that the section 158(1)(c) application would be heard together with the review application, and that he "personally" saw the clerk "*when he filed the [first] respondent's application in the main file containing our review application*".
- [3] But the review application appears to have been prepared only on 23 January 2007, almost two weeks after the section 158(1)(c) application had been initiated. It is thus inconceivable that there would already have existed a "*main file containing [the applicant's] review application*" in which the first respondent's section 158(1)(c) application would have been filed by the clerk of this court. There is no indication of when the review application was filed because the Notice of Motion contains no court stamp to indicate that. The Notice of Motion in respect of the review application appears, however, to have been prepared and signed on

18 December 2006. It is thus conceivable that it was the Notice of motion that was filed with the section 158(1)(c) application.

[4] Some five months after the review application was apparently prepared, on 12 June 2007, the applicant was served with a writ of execution at the second respondent's instance.

[5] A letter dated 11 January 2007 from the first respondent's attorneys to the applicant's attorneys indicates clearly that they were at that early stage aware of the applicant's intention to bring review proceedings. They indicated that they would, in turn, "*cross review*" as their client was not happy with an award of only "*two months compensation*". Their subsequent launching of a section 158(1)(c) application could in the circumstances only give rise to unnecessary costs being incurred.

[6] I am satisfied that the writ falls to be suspended pending the outcome of review proceedings which the first respondent is free to oppose. I am satisfied that the applicant has not sat on its hands since the making of the award in December 2006. The explanation given by the applicant's human resources manager as regards his efforts in prosecuting the review is satisfactory in my view.

[7] The first respondent's counsel has asked from the Bar that the replying affidavit be struck out as it raises new matter. I do not agree. The affidavit seems to me to be addressing the issues raised in the answering papers.

[8] In the result,

[a] the writ of execution and notice of attachment in execution is suspended pending the outcome of the review application under case number JR3230/2007.

[b] the applicant is ordered to obtain the record of arbitration proceedings from the CCMA and deliver same to the respondents within 60 days of this order.

[c] if the applicant should fail to comply with paragraph [b] above, the suspension of the writ of execution and attachment in execution will be automatically lifted.

[d] the first respondent is to bear the costs of this application.

For the applicant: *Mr M Ledwaba*
Instructed by: *Modiba Attorneys*

For the 3rd respondent: *Mr SG Gouws*
Instructed by: *Geldenhuys CJ@LAW Inc.*

Date of hearing: *15 June 2007*

Date of judgment: *22 June 2007*