

IN THE LABOUR COURT OF SOUTH AFRICAHELD IN DURBANCASE NO D52/2008

Heard and delivered on 22.02.2008

5

IN THE MATTER BETWEEN:

CTP LIMITED

Applicant

and

THE STATUTORY COUNCIL OF THE NEWSPAPER,

10 PRINTING AND PACKAGING INDUSTRY

First Respondent

KOJANE, BONSILO NO

Second Respondent

THE SOUTH AFRICAN TYPOGRAPHICAL UNION

Third Respondent

NARAINSAMY, JAYSEELAN

Fourth Respondent

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JUDGMENT

PILLAY D,J This urgent application to stay a writ of execution is dismissed for the following reasons:

1. Urgent applications for staying writs of execution is not there for the asking. The Court has a discretion, exercised judicially, to grant or
20 refuse urgent applications.
2. The applicant employer has failed to satisfy the Court that it will suffer irreparable harm if the application is not granted. The applicant can stop the sale in execution by paying the amount of R57 893,30 awarded to the fourth respondent employee on condition
25 that the employee refunds it if the review application is successful.

The employee has invested his provident fund of R307 428,57 and owns a house with his wife. He is not a person of straw.

3. The applicant has failed to satisfy the Court that the balance of convenience favours the granting of the application. The award
5 reinstated the employee, but as the applicant has not employed him, he does not earn a living.

4. The applicant has failed to date to file the record of the arbitration. The review was filed on 21 November 2007; however the applicant does not say when before the 1st of February 2008 it demanded
10 production of the record. The delay in prosecuting the review is prejudicial to the employee and an order dismissing this application is more likely to expedite the review as the applicant would want to recover its payment as soon as possible.

5. In reaffirming the difference between review and appeal the
15 judgment in *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC) has raised the bar against granting review. The applicant's ground of review is that the arbitrator committed a gross irregularity in "not properly, adequately or satisfactorily consider(ing) the entirety of the evidence presented
20 before her". Whereas the application had better prospects of succeeding when the test for

6. review was the rationality and justifiability of the award, those prospects have diminished under the reasonableness test.

In the circumstances the application is dismissed with costs.

Pillay D, J

Date Edited: 3 August 2008

Appearances:

ON BEHALF OF APPLICANT : P T BUSH

ON BEHALF OF RESPONDENTS : M BINGUM