



**IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

**Not Reportable**

Case no: C415/2020

In the matter between:

**SOUTH AFRICAN POLICE SERVICES**

**Applicant**

**and**

**SIYAKUDUMISA NOTISI**

**First Respondent**

**SHERIFF, PRETORIA CENTRAL**

**Second Respondent**

**Date heard: 22 October 2020 by video conferencing**

**Delivered: 29 October 2020 by means of email of the scanned judgment**

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**JUDGMENT**

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**RABKIN-NAICKER, J**

[1] This application was brought on an urgent basis for the following relief:

“2. That the First and Second Respondents are interdicted and restrained from removing the property of the Applicant listed in the Notice of Attachment of Execution of 12 December 2019 pending the final determination of the review application instituted under case number C809/2018;

3. That the First and Second Respondents are interdicted and restrained from selling the property of the Applicant listed in the Notice of Attachment of Execution of 12 December 2019 pending the final determination of the review application instituted under case number C809/2018;

3A. That the First and Second Respondents are interdicted and restrained from removing the property of the Applicant listed in the email from the Second Respondent to Pretious Sebatha dated 25 August 2020 pending the final determination of the review application instituted under case number C809/2018;

3B. That the First and Second Respondents are interdicted and restrained from selling the property of the Applicant listed in the email from the Second Respondent to Pretious Sebatha dated 25 August 2020 pending the final determination of the review application instituted under case number C809/2018.”

[2] I deal first with Prayers 3A and 3B of the amended Notice of Motion. The email referred to in these prayers includes a return of service by the Sheriff Pretoria Central dated 5 August 2020 and an inventory relating to an attachment with an estimated amount of value of 3 million Rand in respect of 1500 computers/laptops being the property of the SAPS headquarters in Pretoria.

[3] In an email dated 24 March 2020, the office of attorney for the first respondent addressed an email to Bianca Reeves of SAPS legal services, including instructions to the second respondent, as follows:

“Good Day Bianca

I refer to the above case number.

I record that I have attached in this mail the initial inventory list for your ease of reference furnished to our firm on 10 December 2019.

As you may be aware, the deputy sheriff of Pretoria Central, Chris, had indicated that our enforcement of award that was served on your office was defective in that it had disclosed the address of the SAPS as the provincial office whereas

the sheriff has attached at the National Office in Pretoria as directed by our instruction letter.

Our firm has taken steps to correct this, please see attached new enforcement of award with the correct address inserted.

We hereby instruct the sheriff to urgently attach property of the respondent (SAPS) at its national head office and comply with the State Liability Act 20 of 1957, particularly section 8 which directs that the sheriff may remove the attached property after the lapse of 30 days.

Kindly attach the property of respondent again on an urgent basis and we will await the 30 days to lapse before giving the instruction to remove.”

- [4] The amendment to the ‘Enforcement of the Award’ was made without reference or notice to the SAPS. Mr Majang for the first respondent in response to my inquiry as to how the ‘Enforcement of the Award’ document was amended to incorporate the address of SAPS Head Office, confirmed this to me. He was kind enough to forward the Court copies of the correspondence between his firm and the CCMA. This reflects that the ‘Enforcement of the Award’ was amended by an administrator in Legal Services at the CCMA who was informed that the wrong address had been used in the original ‘Enforcement of the Award’. The said administrator informed the attorneys for first respondent that in future an amendment should be sought from the Bargaining Council<sup>1</sup> as the CCMA only ‘certifies section 143’s from the Council’.
- [5] Certification of an award by the CCMA, as is evident from the relevant CCMA forms, is done on notice to the other party. In addition, if the dispute giving rise to the Award was heard under the auspices of a Bargaining Council the signature of the General Secretary of that Bargaining Council must be obtained before it is certified by the CCMA Director.
- [6] In the circumstances, the amendment of the ‘Enforcement of the Award’ was irregular in the Court’s view and cannot serve as a basis for the writ, attachment and intended sale of items which the applicant seeks to stay in prayers 3A and

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<sup>1</sup> Under whom the award was issued i.e. the PSSSBC

3B of this application. In addition, as submitted on behalf of the applicant such an execution would be in breach of the section 71 (2) and (3) of the SAPS Act dealing with 'Unauthorised access to or modification of computer material'.

- [7] I note that the initial instruction to the second respondent to attach items and sell the property of SAPS from its provincial office has been withdrawn on the first respondents own version and the second respondent instructed accordingly. There is no need for this Court to deal with the prayers relating to the writ and attachment of December 2019 therefore, which Notice of attachment was in respect of furniture in the provincial offices of the SAPS with an approximate value of R942,000.
- [8] It has been the first respondent's case in the papers before me and in oral submissions by his attorney at the hearing of the matter, that the execution he seeks is premised on the certification of the Award per se, and no reliance was placed on the Judgment of this Court under case number C1019/2018 in respect thereof.
- [9] I do not therefore find it necessary to deal with the Judgment by Modise AJ and the issues pertaining to the security provided by the National Commissioner in this matter, his judgment in the leave to appeal or the pending petition before the LAC in respect thereof. In my view, the application to stay execution of the writ issued in respect of the National Office of SAPS given the irregular process of obtaining same, must be granted.
- [10] Given that the review of the Award is to be held on November 5 2020, and in the above circumstances, the balance of convenience overwhelmingly favours that the relief sought in prayers 3A and 3B be granted. The review court will decide on whether the decision to reinstate the first respondent was one that a reasonable decision maker could make. I cannot accept that this matter is not urgent as submitted on behalf of the first respondent. Given the intention to attach and sell 300 laptops at SAPS Head Office and the impact same would have on the functioning of a constitutional entity it is inherently urgent.
- [11] In view of the above I make the following order:

Order

1. The First and Second Respondents are hereby interdicted and restrained from removing the property of the Applicant from its National Head Office attached under Case PSSS275/16-17 pending the finalization of the review application under case number C809/2018.
2. The First and Second Respondents are interdicted and restrained from selling the property of the Applicant being 1500 computers/laptops attached under case number PSSS275/16-17 pending the final determination of the review application instituted under case number C809/2018.
3. Costs of this application to stand over for determination by the review court.
4. The second respondent is to be immediately informed of the contents of this Judgment and Order on receipt thereof.



H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances

For the Applicant: N. Nyembe instructed by the State Attorney

For the First Respondent: Majang Attorneys Inc