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EMPLOYMENT ALERT

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HOT OFF THE BENCH: THE ENFORCEMENT OF CCMA ARBITRATION AWARDS UNDER THE LRA AMENDMENTS

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The two matters were *MBS Transport CC vs CCMA and 3 Others J1807/15* ('the MBS application') and the other being *Bheka Management Services vs Kekana and 2 Others J1706/15* ('the Bheka application').

In brief, both applications were brought before the Labour Court on an urgent basis and in order to stay the writs of execution that had been issued pursuant to compensation awards, which the CCMA had then certified for such purpose.

In both matters the employers sought to stay the writs of execution on the basis that they were reviewing the arbitration awards. As such they contended that the writs should be stayed until the outcome of their respective reviews and given that the Sheriff had already attached the employer's goods, but had not yet removed them.

The Labour Court considered the relevant provisions of the amendments to the LRA as contained in s143, and which read as follows:

- *Section 143(1) "An Arbitration Award issued by a Commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory Arbitration Award";*
- *Section 143(3) "An Arbitration Award may only be enforced in terms of subsection (1) if the director has certified that the Arbitration Award is an Award contemplated in subsection 1"; and*

- *Section 143(5) "Despite subsection (1), an Arbitration Award in terms of which a party is required to pay an amount of money, must be treated for the purposes of enforcing or executing that Award, as if it were an Order of the Magistrates Court."* (our emphasis)

In determining the matter, Phatshoane AJ made the following relevant observations:

- over the years, writs of execution were issued by the Registrar of the Labour Court before they could be executed by the Sheriff and as such, the Labour Court had in terms of s145(3) of the LRA, judiciously exercised its discretion to stay these writs where there was a pending review;
- furthermore, that the LRA Amendments to s143 had changed the situation wherein the CCMA could now issue writs for the enforcement of its own arbitration awards however, that the certification of an award by the CCMA did not convert the award into an order of the Labour Court, despite the legislative wording;
- that s143(5) creates confusion given that an arbitration award which orders the payment of money must be treated for the purposes of enforcing or executing that award, as if it were an order of the Magistrates Court; and

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Section 143 does not clothe the CCMA with the requisite jurisdiction to issue writs of execution and as such these must still be issued by the Labour Court.



- that clause 19.1.8 of the CCMA's Practice and Procedure Manual states that, 'Once an Award is certified, it can be executed upon delivery to the Sheriff and in terms of the LRA Amendments of 2014, and as such there is no need to approach the Labour Court for a writ to be issued first'. (Our emphasis.)

With these considerations at the fore, the Labour Court held that the CCMA has not been statutorily assigned with the authority to issue writs and furthermore that the certification of an award followed by its execution through the Sheriff is in fact *ultra vires*.

As such, s143 does not clothe the CCMA with the requisite jurisdiction to issue writs of execution and as such these must still be issued by the Labour Court. On this basis, there was no reason to stay the writs issued by the CCMA as they were a nullity and fell to be set aside.

This decision may cause some debate around whether further legislative intervention is required but for the time being, employers are reminded to consider the importance of this decision, if faced with CCMA issued writs being executed.

Nicholas Preston

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