

SUMMARY

The dispute concerns a writ of execution in respect of a taxed bill of costs, which Lumko Mtinde (“the Employee”) sought to stay by launching an urgent application, pending the outcome of an application to review and set aside the taxed bill of costs.

The chronology preceding the writ of execution saw the Employee initially represented by Marweshe Attorneys, and later, when the costs order was made, by Matuba Maponya Attorneys. Even with the change of attorneys of record, the draft bill of costs was served timeously on the Employee. The Employee was requested to make an offer in regard to costs but failed to respond.

Accordingly, the period to lodge objections to the bill of costs lapsed and the bill was taxed and dispatched to the Employee’s attorney (attaching the taxed bill and demanding full payment).

With the aforesaid history in mind, the Employee contended that this application was urgent when the Respondents persisted with their instruction to the sheriff to remove the assets under attachment.

The Respondents contended that this application was lacking on the grounds of urgency. At the heart of the Respondents contentions was that the urgency was “self-created”, since the Employee had been afforded ample time to deal with the bill of costs and had took no steps to raise any objections to the bill.

HELD

On analysis of the factual matrix, the court was mindful that “any right to review the taxing master in terms of Rule 10 ought to have been filed within 10 days of the date of taxation”. The Employee had failed to adhere to this stipulated period. As such, the Respondents were permitted to instruct the sheriff to proceed to execute the writ in the normal course.

At all times the Employee was cognisant and aware of the bill of costs and yet failed to act timeously, being to their detriment.

When the court considered costs in the matter, the court was mindful of Section 162 of the Labour Relations Act (“LRA”) which “affords the court a broad discretion to make orders for costs

according to the requirements of the law and fairness”.

In light of the above, the court was reluctant to make an order for costs against the Employee, especially given that the Employee was an individual.

VALUE

This judgment reminds us that the Labour Court won't entertain matters where urgency is contrived and self-created. The decision reiterates the courts stance on maintaining and preserving the integrity of the labour law legislative framework. The judgment ultimately reminds us of the importance of launching an application timeously and to err on the side of caution when launching an urgent application.

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