



DELETED CASES ARE NOT APPLICABLE

(1) REPORTABLE: YES/NO.  
(2) OF INTEREST TO OTHER JUDGES: YES/NO.  
(3) REVISED.

13/11/19  
DATE

*[Signature]*  
SIGNATURE

**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable  
Case no: J2136/19

In the matter between:

**HARMONY GOLD MINING COMPANY**

Applicant

and

**NATIONAL UNION OF METALWORKERS  
OF SOUTH AFRICA OBO MEMBERS**

First Respondent

**ASSOCIATION OF MINEWORKERS &  
CONSTRUCTION UNION**

Second Respondent

**NATIONAL UNION OF MINEWORKERS**

Third Respondent

Heard: 30 October 2019

Delivered: 13 November 2019

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**JUDGMENT**

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**BALOYI, AJ**

- [1] The applicant has approached the court on an urgent basis and seeks an order staying the enforcement of the arbitration award issued under CCMA Case No. GAJB26692 dated 12 September 2019 pending the finalization of its application to review and set aside the award. The application is opposed by the first respondent, NUMSA. The second and third respondents have played no role in this application.
- [2] The applicant seeks the stay of the award pending the finalization of the review application on the following facts –
- 2.1. The first respondent referred a dispute in terms of sec 21(8) of the LRA to the CCMA in which it sought organizational rights of access to the workplace and deduction of trade union subscriptions or levies and an award was rendered in granting the first respondent organizational rights. The applicant has instituted review proceedings to review and set aside the award.
  - 2.2. The second and third respondents enjoy organisational rights and at the arbitration they opposed NUMSA's claim for organizational rights.
  - 2.3. The applicant has good prospects of success in the review application and should it succeed in setting the award aside, the first respondent would have benefited from a defective award in circumstances where it was not entitled. The enforcement of the award will therefore defeat the purpose of the review application – it will deprive the applicant of its statutory right to review the arbitration award.
  - 2.4. It is likely that the enforcement of the award will lead to industrial unrest particularly in light of the second and third respondent opposition of the dispute at the CCMA. This will result in financial losses for the company and may result in inter-union violence.
  - 2.5. The implementation of the Award will undermine collective bargaining in the workplace as it will lead to inconsistent application of the applicant's Employee Relations Framework.

2.6. The applicant has no alternative relief and the balance of convenience favours the applicant – the first respondent will not suffer prejudice should the order be granted and yet the purpose of the review application will be defeated if the award is enforced.

*Urgency*

- [3] An applicant for relief on an urgent basis is required to set out in explicit detail the facts which they allege render the matter urgent and warrant that it is allowed to be heard ahead of other litigants and the Practice Manual, paragraph 12.5, requires that an applicant must set out explicitly the circumstances which render the matter urgent. Applications to stay the execution of an award are not as a matter of course urgent and an applicant must show why their application, ahead of other applications, should be given preferential hearing.
- [4] The applicant asserts that “the matter is self-evidently urgent” because (i) NUMSA demands immediate enforcement of the Award; (ii) there is a real risk of violence between the first, second and third respondents should the award be enforced; and (iii) implementation of the Award will defeat the purpose of the review application in the event that the applicant prevails in the review application.
- [5] I do not consider or agree that NUMSA’s demand that the applicant comply with the Award in itself renders the matter urgent. If that were so, the immediate demand to enforce an Award would almost always make a case for urgency. The party in whose favour an Award finds is always entitled to demand compliance with without restriction and this does not render the staying of the enforcement of the Award a matter that must be determined on an urgent basis. An applicant who seeks to rely on the demand for compliance as a ground for urgency must do more than allege the fact of the demand for immediate enforcement of an Award, it must show why the demand for enforcement renders the matter urgent. The applicant in the present matter seeks to do so with its allegations about the risk of violence and that the enforcement of the Award will defeat the purpose of the review application. I do not agree with either.

- [6] The risk of violence that the applicant is concerned about is not substantiated with or borne out by any evidence before me. The applicant has not alleged any threats of violence from the second and third respondents should the award be executed. The second and third respondents have not asserted any risk of violence and the applicant's reliance on the statement of the second respondent to that effect in the arbitration and the fact that the third respondent opposed NUMSA's claim at arbitration do not take the matter any further. There is also no explanation why such risk would be occasioned at the applicant's Kusasaletu operation where NUMSA has been awarded organisational rights when it has not been the case at the applicant Moab Khutsong operation where NUMSA already enjoys organizational rights as appears from the founding affidavit in the review application, annexure FA1. For its part, NUMSA states in its answering affidavit that it has been organising at the applicant's Kusasaletu's operation for 20 months and there has not been anything that suggests that the granting of the organizational rights at issue is likely to cause violence and industrial unrest. There is presently an Award and its implementation cannot be frustrated by the unsubstantiated alleged possibility of violence. In any event, if such possibility of violence should exist, it will continue to exist even should the applicant fail in the review application and the applicant has not suggested that such possibility of violence will be any less if it should fail in the review application. In the event, I am unable to place any stock on the unsubstantiated risk of violence should the Award be implemented.
- [7] I also do not agree with the applicant that if the order is not granted on an urgent basis, this will defeat the purpose of the review application in that the first respondent will benefit from the award which may later be held to be defective as set aside as a result. The applicant asserts that if the enforcement of the Award is not stayed, it will be deprived the right to review the Award. I do not agree. Nothing in law precludes the applicant pursuing its review application if the Award is enforced. This is not the kind of Award where enforcement pending review renders the review application academic. The union subscriptions ordered in the Award to be deducted from members of NUMSA are monies that the applicant is not at risk of losing – they are monies that belongs to employees who are members of NUMSA and who would have

electd and agreed that they should be paid to NUMSA. There is therefore no financial risk to the applicant in this regard. Should the applicant succeed in the determination of this application in the normal course, there is no reason that it cannot withdraw the organizational rights accorded to NUMSA by the Award. Similarly, there is no reason why the applicant cannot withdraw the right of access if it should prevail in the determination of this application in the normal course or in the review application. In *East Rock 7 (Pty) Ltd & another v Eagle Valley Granite (Pty) Ltd & others* [2012] JOL 28244 (GSJ), explaining the meaning of substantial redress in High Court Uniform Rule 6(12)(b)), Notshe AJ said, “[7] *It is important to note that the Rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case*”. I am satisfied that the applicant will obtain adequate or substantial recourse if it should succeed in the normal course. The matter is accordingly in my view not urgent.

[8] Accordingly, it is ordered that –

1. The matter is not urgent;
2. There is no order as to costs.



MS Baloyi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: J Olivier

Instructed by: Webber Wentzel

For the First Respondent: N Moyo

Instructed by: NUMSA

LABOUR COURT