SUSPENSION, OPERATION AND EXECUTION OF A COURT'S DECISION IN HIGH COURT MATTERS

Category: Commercial Law
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A court's decision (court order/judgment) is operational and executable once it is granted or handed down by a court. Although this holds true, there are instances where a party disputes the correctness of a decision or wants to appeal it.

Where an application to vary, rescind or set aside a court's decision is instituted, the application does not automatically suspend/stay the court's order.

Rule 45A of the Uniform Rules of Court stipulates that the court may suspend the execution of any order for such period as it may deem fit.

Options available to suspend the operation and execution of a court's decision

Appeal

Rule 49 of the Uniform Rules of Court sets out a procedure to appeal a court's decision. Once it is appealed, its operation is automatically suspended pending the outcome of such appeal.

There are options available to a party in whose favour the court's decision was granted if that party seeks immediate execution of the decision when an appeal is pending. Section 18 of the Superior Courts Act, 10 of 2013 set outs the requirements to be met when bringing such an application. The applicant must prove that:

1. exceptional circumstances exist for the decision to be immediately executable (during the appeal period);
2. a respondent will not suffer irreparable harm if the decision is declared immediately executable;
3. the appellant will suffer irreparable harm if the court's decision is not declared immediately executable.

In the matter of *Knoop NO and another v Gupta (Tayob as intervening party*),[1] in its judgment, the Supreme Court of Appeal court said:

> "…… *The grant of leave to execute is constrained by the requirement that it* [the court's decision may be declared immediately executable] *may only be granted if there are exceptional circumstances; if the applicant will suffer irreparable harm if it is not granted; and if the grant will not cause the respondent to suffer irreparable harm.…"*

A respondent in a section 18 application has an automatic right to appeal.

Vary or set aside

A party affected by a court's decision may apply to have it varied, set aside or rescinded. When bringing an application, an applicant must notify the parties whose interests stand to be affected/prejudiced by such application as the court will not make any order rescinding or varying any court decision.

Conclusion

As is customary in civil matters, a party bringing an application for or against the executability of a decision will have to meet certain requirements or prove that valid grounds exist for a decision to be stayed/suspended or declared immediately executable.

There is no yardstick or rule of thumb against which such applications are measured. Each matter is decided on its own merits.

Once a court's decision is in operation, it is valid and remains executable until it is appealed or

ordered otherwise.

If you intend appealing a court’s decision or want to have it immediately executable, please contact us.

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[1] [2021] 1 All SA 17 (SCA).