

THE IMPACT OF APPEALS ON COURT ORDERS

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Timing is a very important consideration to dispute resolution.

The only lawful way to resolve a dispute, unless agreement is reached or there is a referral to arbitration, is to obtain a court order.

There are two paths available to obtaining a court order. The first involves an application to court using affidavits. This is possible where there are no disputes of fact relevant to the legal issues in question. In the writers' experience to obtain a court order using an application process in KwaZulu Natal takes approximately 3 months if there is no opposition and between 6 to 18 months, sometimes more, if there is opposition.

The second and generally more lengthy route involves a trial. There are normally no detailed affidavits involved. Depending on how many days are necessary to interrogate witnesses and experts, in KwaZulu Natal it can take between 18 to 36 months or more for a trial to be concluded. In the writers' experience it can then take up to 6 months or more for a Judge to deliver an award.

Frustratingly for a successful litigant, court orders are not enforceable if they are appealed. This prolongs matters even further as there is no final outcome until the appeal is decided.

There is however the possibility of making an application to court to be able to execute an order pending the outcome of an appeal. The recent case of *Swart and another v Cash Crusaders (Pty) Ltd 2018 (6) SA 287 (GP)* is a warning though to litigants, that if they want a court order to be enforceable despite an appeal, very specific requirements must be met.

Firstly, the court emphasised that exceptional circumstances must exist. Secondly, there must be proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not put into operation and that the other party will not suffer irreparable harm if the order is put into operation.

In this case, Swart and his new employer both applied for Leave to Appeal an award granted in favour of Cash Crusaders to enforce a restraint of trade agreement. Cash Crusaders then applied to have its award executed pending the outcome of the appeal.

Cash Crusaders was not successful with its application because although it proved no irreparable harm would be caused to Swart, it failed to deal with the effect of the restraint on the new employer which was also a party to the proceedings.

The lesson here, apart from to appreciate how long it can take to resolve a dispute, is to remember that court orders are generally not enforceable pending the outcome of an appeal. Under exceptional circumstances they can be enforceable despite an appeal, but caution must be exercised when pursuing such an outcome.

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