

SOUTH AFRICA / JUDGMENT

Association of Mineworkers and Construction Union and Others v Piet Wes Civils CC and Others (J2845/2016) [2023] ZALCJHB 160 (25 May 2023)

[2023] ZALCJHB 160

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

J2845/2016

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THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

No: J 2845/2016

In the matter between:

ASSOCIATION
OF MINEWORKERS AND
CONSTRUCTION
UNION
First
Applicant
AMCU
MEMBERS
Second
to Further Applicants
And
PIET
WES CIVILS CC
First
Respondent
WATERKLOOF
SKOONMAAKDIENSTE CC
Second
Respondent
HENDRIK
DIEDERICK PIETERSE

Third
Respondent
BRUCE
GALLET VAN ROOYEN
Forth
Respondent
ELIZABETH
BARDINDINA PIETERSE
Fifth
Respondent
SEANI
TSHIELA MPHAPHULI
Sixth
Respondent
WILLIAM
TEBEGO GOMBA
Seventh
Respondent
Heard: 21 April 2023
Delivered: 25 May 2023
(This judgment was
handed down electronically by circulation to the parties' legal
representatives, by email, publication
on the Labour Court's
website and released to SAFLI. The date on which the judgment is
delivered is deemed to be 25 May 2023.)

JUDGMENT

VAN NIEKERK, J

[1] On 21 December 2022 the applicants applied ex parte for an order calling on the first, second, third and fifth respondents to appear and show cause why they should not be held in contempt for failing to comply with an order granted by the late Steenkamp J on 13 January 2017, and/or the order granted by Nkuta-Nkotwana J on 1 October 2021. The order granted by Steenkamp J was one of reinstatement in terms of section 189A (13) of the LRA. This order

was the subject of an unsuccessful appeal, and a further unsuccessful appeal to the Constitutional Court. In the proceedings before

Nkuta-Nkotwana J held on 27 August 2021, the third and fifth respondents asserted that they could not comply with the order concerned since the first and second respondents had been dormant since December 2016, with the second respondent in the process of deregistration. Further, an acrimonious relationship among the members of the first and second respondents had resulted in an inability of either to make decisions. Nkuta-Nkotwana J dismissed these contentions. The court found the first, second, third and fifth respondents in contempt of the

order granted on 13 January 2017. Instead of committing the third and fourth respondents to prison as sought by the applicant, the court ordered that in the absence of compliance with Steenkamp J's order within 10 days, a fine of R100 000 was to be paid by no later than 29 October 2021. On 23 November 2021, Nkuta-Nkotwana J struck from the roll an application

for leave to appeal against her judgment, and on 21 June 2022, dismissed the application with a punitive order for costs.

- [2] The third respondent deposed to the answering affidavit in the present proceedings. He avers that he and the fifth respondent did not have the funds to petition the LAC for leave to appeal against the dismissal of the application for leave to appeal. He states further that he was advised by his legal representative to obtain funds to pay the R100 000 fine in terms of the order granted on 1 October 2021. The third respondent states that after the sale of a truck, the necessary funds were raised and after some difficulty in ascertaining from the registrar how the fine was to be paid, the fine was eventually paid on 16 March 2023.
- [3] The applicant contends that the respondents remain in contempt, notwithstanding the payment of the fine, in the absence of compliance with the order granted by Steenkamp J. Specifically, the applicant submits that if the respondents were allowed merely to pay the fine without compliance with the order granted by Steenkamp J, this would render the order nugatory and result in a flouting of the law. Further, the applicant submits that the fine related only to the respondents' non-compliance prior to the order granted by Nkuta-Nkotwana J – the fine imposed did not pertain to any subsequent non-compliance. The respondents do not dispute that they have failed to comply with the order made by Steenkamp J; they contend that payment of the fine was punishment for their contempt and that in the absence of any appeal by the applicants against the judgment of Nkuta-Nkotwana J, the matter is at an end.
- [4] The wording of the order granted on 1 October 2021. The order reads as follows:
1. The first, second, third and fifth respondents are held to be in contempt of the court order of Steenkamp J, dated 13 January 2017.
 2. The first, second, third and fifth respondents shall purge the contempt within 10 days from the date of the judgment.
 3. Should the first, second, third and fifth respondents failed to comply with the order in paragraph two above, they shall pay a fine of R 100 000.00 (Hundred Thousand Rand) jointly and severally, the one paying the other to be absolved, payable at the office of the registrar of this court by no later than 29 October 2021.
 4. The third and fifth respondents shall pay the costs of this application.
- [5] In the course of the court's judgment, the court held that the crime of contempt had been established and that while the contumacious disobedience of judicial authority could not be countenanced, the case was not one that warranted the punitive sanction of committal. The

court went on to hold that the contemnors ought to be given a chance to redeem themselves by purging the contempt within 10 days from the date of the judgment and order. The court recorded that should they fail to do so, they would be ordered to pay a fine. This finding finds reflection in the terms of the order granted. On a proper construction of that order, the first, second, third and fifth respondents were held in contempt, they were given an opportunity to comply with the order granted by Steenkamp J within 10 days, in the absence of compliance, they were to pay a fine. The order is silent on the ongoing nature of any contempt, nor does it specifically order compliance with the order granted by Steenkamp J after payment of the fine.

- [6] In *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC), the Constitutional Court drew attention to the distinction between coercive and punitive contempt orders. Coercive orders call for compliance with the original order that has been breached, as well as the terms of the subsequent contempt order. By contrast, punitive orders and to punish the contemnor by imposing a sentence which is unavoidable (at paragraph 32). The wording of the in the present instance is at once coercive in the sense that it requires compliance with the original order but also punitive in the sense that in the absence of compliance, a sentence of a fine was imposed. What is significant as I have indicated, is that the court did not deal with the consequences of any further contempt in its order, either by imposing a further sanction of the continued non-compliance, or otherwise. It is not uncommon in this court for a further suspended sanction to be imposed should a respondent persist with its failure to comply with the order in question. What in the present instance was not formulated in that fashion - in the absence of compliance, a fine was to be paid and the court elected to leave the matter there.
- [7] In any event, I fail to appreciate how it can be said that in the present circumstances, any non-compliance with the order granted by Nkuta-Nkotwana J is wilful and mala fide. The respondents made payment of the fine into the trust account of their attorneys on 11 July 2022, some 13 court days of the suspension of the order lapsed. It is not disputed that they had to sell a truck to obtain the funds or that there was a protracted engagement between their attorney and the registrar's office as to the modalities of payment of the fine.
- [8] In short, the respondent's contempt of the order granted by Steenkamp J was purchased by the payment of the fine in terms of the order granted by Nkuta-Nkotwana J and the papers do not disclose any wilful non-compliance with the terms of the latter order. The application thus stands to be dismissed.
- [9] In relation to costs, the court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness. In my view, those requirements are best satisfied by each party bearing its own costs.

I make the following order:

1. The application is dismissed.

André van Niekerk

Judge of the Labour Court of South Africa

Appearances:

For the applicant: Adv L Hollander Instructed by: LDA Incorporated Attorneys For the
respondent: Adv R Grundling Instructed by: Cavanagh & Richards Attorneys

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Prepared on 13 October 2026 · Esheria