

SOUTH AFRICA / JUDGMENT

Coetzer v Thabakholo Environmental Solutions Pty Ltd and Another (J1599/23) [2024] ZALCJHB 248 (4 June 2024)

[2024] ZALCJHB 248**COURT**

Labour Court Johannesburg

BEFORE

T Gandidze

CASE / FILE NUMBER

J1599/23

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Source record**FLYNOTES:**

LABOUR – Contempt – Failure to reinstate – Certified award – Applicant has not been re-instated per award – Respondents’ bare denial that they were not served and did not have knowledge of certified award – Non-compliance with order established – Defences of repudiation and estoppel are misconceived – Non-compliance with certified award was wilful and mala fide – Respondents are guilty of contempt of court – Suspended fine on condition of compliance with certified award.

THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG
Not Reportable
Case
no: JR1599/23
In

the matter between:	BERNARDUS RUDOLPH COETZER Applicant and THABAKHOLO ENVIRONMENTAL SOLUTIONS PTY LTD First Respondent WALTMAN BOTH Second Respondent
Heard:	15 May 2024
Delivered:	4 June 2024
Summary:	Contempt of court application in respect of a certified award. Respondent resisting the orders sought on the grounds that the applicant repudiated his claim and must be estopped from alleging non-compliance with the certified award

JUDGMENT
GANDIDZE, AJ

Introduction

- [1] In November 2023, the applicant, Mr Bernadus Coetzer, filed an application seeking to have the first respondent, Thabakholo Environmental Solutions (Pty) Ltd, and its director, Mr Waltman Botha, held in contempt of court for failing to comply with the terms of a settlement agreement which was made an award and subsequently certified (certified award). In terms of the certified award, the parties agreed that the applicant, who had been dismissed, would be re-instated into his position of Supervisor or a suitable position subject to undergoing a medical assessment. To this day, the applicant has not been re-instated, hence this application.
- [2] The application is opposed by the first and second respondents (respondents) principally on the ground that the applicant refused the alternative position offered to him, and therefore, he repudiated his claim and must be estopped from alleging non-compliance with the terms of the settlement agreement.

Background facts

[3] The applicant was dismissed by the first respondent in July 2021 for being medically unfit for duty. He referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) and at conciliation on 5 May 2022, the parties settled the matter on the basis that:

‘1. The applicant will be re-instated to his previous position (Supervisor) or placed at a suitable position;

2. The re-instatement is subject to the medical examination which the applicant must undergo in the mine; and

3. The applicant is to report to the mine for medical examination on or before 01 June 2022.’

[4] It does not appear that the parties engaged each other again after signing the settlement agreement, until 19 May 2022, when the first respondent sent a letter to the applicant. As the respondent’s opposition to the contempt application is based on the contents of this letter, I reproduce it in full:

‘Dear Mr Coetzer

The recent CCMA Con/Arb hearing dated 5th May 2022 and the subsequent Settlement Agreement of even date, refers.

The management of STS Environmental (Pty) Ltd in consultation with Mr Waltman Botha (Managing Director- Thabakholo Environmental Solutions (Pty) Ltd) have examined the award granted to yourself by the CCMA and resolve as follows:

1. The medical examination scheduled for 25th May 2022 is to be cancelled as the outcome of same has no bearing on the current project, as the contractual and operational requirements of same spurred the immediate changes that had to be implemented.
2. Due to our contractual and operational requirements on Sishen Mine, we were unable to operate with the position of Supervisor being vacant, and this post had to be filled.
3. The above being said, we have several current long-term projects based in Gauteng, Western -, and Eastern Cape where we are able to offer you a suitable position. This will require that yourself and Mr Waltman Botha meet in Gauteng on/ before 01st June 2022 to chat a way forward regarding which project you are best suited for and engage one another regarding other employment related issues.

In keeping with the requirements as set out in the Settlement Agreement, please note that all instructions are to be complied with, hence a medical fitness assessment by a suitably qualified specialist will be arranged and conducted prior to your presence on site. For both your protection and well-being, and also for Health and Safety reasons, it is essential that we ascertain whether you are well matched to be on site.

In the event that you are not amenable to the suitable position proposed and/or circumstances coupled with, a mutual separation package equivalent to 4-week/1-month salary payment is on offer for your consideration. We wish to emphasise the importance of compliance by all parties concerned, hence we trust that you will treat this matter with the necessary urgency it deserves. Please note that a hard copy of this document will be availed to yourself coupled with an electronic version of which we require converse confirmation. Of receipt for both.

We look forward to your favourable response in this regard.

Waltman Botha

Managing Director: TES (Pty) Ltd'

- [5] Not having heard from the applicant, the first respondent followed up with the applicant on 26 May 2022 and in response, the applicant advised that the matter would be referred to the CCMA. Even though I record this information as background fact, the exchange between the parties is contained in an e-mail handed up in court when oral arguments were heard, and which was not referred to in the pleadings. The applicant's representative objected to the admission of the letter into evidence and persisted with this objection in the supplementary heads of argument filed after oral argument, this time adding that a copy of the e-mail handed up in court had not been provided to the applicant subsequent to the proceedings. I return to this issue when I deal with the merits of the contempt application itself.
- [6] Returning then to the chronology, on 15 September 2022 the applicant filed an application with the CCMA, in terms of section 142A of the Labour Relations Act[1] (LRA) to have the settlement agreement made an arbitration award. The application was granted on 8 November 2022.
- [7] Subsequently and on 7 December 2022, the applicant applied for the arbitration award to be certified in terms of section 143(3) of the LRA. Certification of an award serves the purpose that the arbitration award may be enforced as if it were an order of this court. The application for certification was served on Mr Ben Baloyi of the first respondent via e-mail on 8 December 2022. The CCMA certified the award on 6 March 2023.
- [8] It is unclear whether there were any other communications between the parties in the period that followed the certification of the arbitration award but in a letter dated 7 July 2023, the applicant's erstwhile attorneys of record, Eilers Attorneys, addressed a letter to the first respondent demanding compliance with the "Section 142A Order" within 14 days of the date of the letter, failing which legal proceedings would be instituted and costs sought against the first respondent.
- [9] The respondents' current attorneys of record responded to Eilers Attorneys on 14 July 2023, and I deal with the contents of that letter when I deal with the respondent's answering affidavit in the contempt application.

- [10] Thereafter, the respondents allege that their attorneys remained in constant contact with Eilers Attorneys who, at some stage, indicated that an application would be brought in this court but later gave an assurance that no such application had been filed. Despite this latter assurance, the respondents learnt for the first time in April 2024 that this contempt application had been filed.
- [11] The application to hold the respondents in contempt of court was filed with the court in November 2023 and reflects that the applicant was represented by Mphlatlalazana Attorneys. The application was initially set down for hearing on 25 January 2024 but was struck from the roll due to no appearance for the applicant, and was re-enrolled after Mr Mphlatlazana, an attorney with Mphatlalazana Attorneys deposed to an affidavit explaining his non-appearance in court on 25 January 2024.
- [12] On 18 April 2024, this Court granted an order directing the second respondent to appear in court on 15 May 2024 and show cause why he should not be found guilty of contempt for failing to comply with the certified arbitration award. The court directed that the court order be served on the respondent's attorneys.
- [13] The respondent's attorneys were served with the court papers and the order of 18 April 2022 on 30 April 2024.
- [14] Through their attorneys, the respondents served an answering affidavit on the applicant's attorneys on 10 May 2024 and filed it with the court on 13 May 2024. However, this affidavit did not find its way into the court file before the hearing date and was handed up when oral argument was heard.
- [15] The applicant also handed up its replying affidavit on the day of the hearing.
- [16] After hearing oral argument, I indicated that I would extend the rule issued on 18 April 2024 and reserve judgment to enable the parties to file heads of argument addressing the respondent's submissions that the applicant repudiated his claim and therefore is estopped from alleging non-compliance with the certified arbitration award. I also needed time to peruse and consider the answering and replying affidavits which were handed up when the matter was argued.
- [17] The above background facts were largely drawn from the applicant's founding affidavit and other documents in the court file. Next I deal with the respondent's opposition to the contempt application.

Respondent's answering affidavit

- [18] As I recorded above, the answering affidavit was handed up in court when the matter was argued on 15 May 2024.

- [19] In it, the respondents took issue with the applicant's failure to serve the contempt application on them and stated that they only became aware of the application and order on 30 April 2024. This, despite that they had kept in touch with Eilers Attorneys during the period November 2023 to April 2024 and that as of December 2023, Eilers Attorneys assured the respondent's attorneys that no court application had been filed.
- [20] The respondents also deny that the letter from Eilers Attorneys dated 7 July 2023 was not responded to. The respondents attached to their answering affidavit a letter dated 14 July 2023 from its attorneys of record, Van Heerden & Kruger Attorneys to Eilers Attorneys taking exception to the latter's conduct in addressing correspondence directly to its client instead of its attorneys.
- [21] As for the allegation that the respondents had failed to comply with the section 142A order, the respondents point out that it is recorded in the letter from their attorneys that the respondents had been precluded by the applicant from complying with the terms of the settlement agreement because he refused to accept "the reasonable alternative position offered to him", and that Eilers Attorneys who specialise in labour law must know that an employee who refuses a reasonable alternative position during a retrenchment process can be terminated without giving rise to an obligation to pay severance pay. More importantly, the letter records that the employment relationship requires the foundation of trust and that without trust, there cannot be an employment relationship. The letter concludes as follows:
- '8. Writer is therefore flabbergasted that your offices will give effect to what we can only presume to be your client's instructions to request compliance with the alleged order referred to in your letter as the trust relationship has been irretrievably broken down by your client's refusal to accept a reasonable alternative position and the shocking defamatory remarks your client made against our client.
9. Should your client wish to approach the Labour Court of South Africa for further relief, our officers hold instructions to vigorously oppose such proceedings, as well as to request a punitive costs order on a scale between attorney and own client. We are sure that you will advise your client accordingly.'
- [22] The respondents deny knowledge of the arbitration award or receiving the application to certify the award. Therefore, they could not be expected to comply with an arbitration award they were unaware of, so the submission went.
- [23] The respondents acknowledge the settlement agreement concluded at the CCMA and submit that it "forms a crucial element in the dispute in casu, since the Applicant alleges that the Respondents are in breach of the terms of the settlement agreement, which is denied by the respondents". The answering affidavit records that the letter of 19 May 2022 "set out to offer to the Applicant additional positions within the first respondent in Gauteng, Western Cape and Eastern Cape" because the respondent retains a discretion to relocate employees depending on its operational requirements. The submission is further that the additional positions offered served as the Respondent's attempt to comply with the settlement

agreement and that the applicant refused to accept these additional positions. The conclusion to the submission is that, had the applicant accepted any of the offered positions, the respondents would have complied with the terms of the settlement agreement,

[24] In the alternative to accepting the alternative positions offered, the applicant is also said to have failed to respond to the proposed separation agreement as reflected in the letter of 19 May 2022.

[25] The high-water mark of the submission is that the applicant “repudiated his claim in terms of the settlement agreement and as a result... should be estopped from raising the point that the Respondent failed to comply with the Court Order”.

[26] For all these reasons, the respondents resist the contempt application.

Applicant’s replying affidavit

[27] In the replying affidavit deposed to on the hearing date, the applicant stated that both applications to have the settlement

agreement made an arbitration award and to certify the award were served on the respondents on 7 July 2023.

[28] The applicant also avers that he did not hear from the respondents after 19 May 2022.

[29] He takes issue with the respondents’ actions in filling the Supervisor position before he could be subjected to a medical examination on the scheduled date. Even after his position was filled, he did not receive any offers from the respondents. A copy of the contract of employment signed by MK Setumu who was offered the Supervisor position is annexed to the replying affidavit.

[30] The applicant also explained that the contempt application was ex parte, and the court order of 18 April 2024 had to be typed first before it could be uplifted and served.

Submissions

of the parties

[31] The parties’ heads of argument repeat the same contentions put forward in the pleadings and refer to the case authorities that the parties were relying upon.

Legal principles applicable in contempt applications

[32] Applicants in contempt of court applications are required to establish (a) that a court order was granted; (b) that the respondents were served with the court order or had knowledge of the order; and (c) non-compliance with the court order. Once these requirements have been met, wilfulness and mala fides will be presumed unless the respondent establishes reasonable doubt. A respondent who fails to establish reasonable doubt will be found guilty of contempt.[2]

Was an order granted against the respondent and were the respondents aware of it?

- [33] It is common cause that the parties entered into the settlement agreement on 15 May 2022, to settle the unfair dismissal dispute that the applicant referred to the CCMA following his dismissal for being unfit for duty.
- [34] After the first respondent sent the applicant the e-mail of 19 May 2022, the latter advised that he would refer the matter to the CCMA. The communication that the matter would be referred to the CCMA is contained in the e-mail handed up when oral argument was heard.
- [35] True to his word, in September 2022 the applicant filed an application in terms of section 142A of the LRA to have the settlement agreement made an award. Section 142A(1) of the LRA provides for making settlement agreements into arbitration awards by agreement or on application by a party. Proof of service of the application is attached to the applicant's pleadings.
- [36] Subsequently and in November 2022, the applicant applied for the certification of the arbitration award in terms of section 143(3) of the LRA. That application was served on a representative of the first respondent and again proof of service is attached to the applicant's papers. The award was certified in March 2023. Other than a bare denial that they did not receive these applications, the respondents have not offered an explanation why the e-mails, which serve as proof of service, would not have been received. In the absence of such an explanation, the only reasonable conclusion has to be that the e-mails were received by the respondents.
- [37] In addition, in July 2023 the respondents were informed by Eilers Attorneys, then legal representatives for the applicant, that legal proceedings in this court would be instituted should they continue to fail to comply with the "section 142A order". In the response from its attorneys to Eilers Attorneys dated 14 July 2022, the respondents did not deny knowledge of the "section 142A order" merely referring to it as an 'alleged order'. Nevertheless, the respondents went on to provide reasons why the terms of the settlement agreement had not been given effect to. If the respondents were unaware of the order referred to, they could have simply requested a copy. They did not request it because they were aware of the proceedings instituted to make the settlement agreement an arbitration award as well as the process to certify the award.
- [38] They were also informed that the next step would be an application to this court and their stance was that such an application would be vigorously opposed, and a punitive costs order sought against the applicant.
- [39] Therefore, even if the respondents were not served with the certified award, which I find improbable, they had knowledge of it. Therefore, I reject the respondents' bare denial that they were not served and did not have knowledge of the certified award.

Was the certified award complied with?

[40] It will be recalled that the certified award requires the respondents to (a) re-instate the applicant in the Supervisor position, alternatively a suitable position; and (b) to ensure that the applicant undergoes a medical examination on or by 1 June 2022. That none of this happened is common cause, hence non-compliance with the order by the respondent is established. The only issue is whether the applicant prevented the respondents from complying with the certified award, an issue I turn to consider next.

Has the respondent established reasonable doubt of wilfulness and mala fides?

[41] Once the first three requirements are established, the consequence is that willfulness and mala fides is presumed unless the respondent establishes reasonable doubt.

[42] In my assessment, the starting point is the letter of 19 May 2022. In that letter, the respondents refer to having “examined the award granted to yourself by the CCMA” and the resolutions made by the respondents in light of that award. Why the respondents would refer to an award granted by the CCMA, whereas the parties settled the matter remains unclear, but signalled the beginning of trouble for the applicant.

[43] After the letter of 19 May 2022, the contents of which I will return to below, the applicant informed the first respondent that he would refer the matter to the CCMA. There was no reaction to this intended step by the applicant. Thereafter and in September 2022, the respondents were made aware of the application to have the settlement agreement made an award. Again this step did not

elicit any reaction from the first respondent. The next step taken in November 2022 to certify the award again did not elicit any response from the first respondent.

[44] Above I rejected the respondents’ bare denial that they did not receive the two applications referred to above. The respondents’ inaction on receipt of the two applications cannot be ignored. By then they were already of the view that the applicant had prevented them from complying with the terms of the settlement agreement but took no steps to oppose the two applications. It would have been obvious to the respondents that the two applications were launched to enable enforcement of the settlement agreement. That would have been the opportune moment for the respondents to raise the defences of ‘repudiation’ and ‘estoppel’ which the respondents raise in the current application. The respondents could not fold their hands, as they did in this case, hoping that the applicant would throw in the towel and not pursue the matter any further.

[45] In my view, once the arbitration award was certified, there can be no talk of a breach of a settlement agreement. Rather, there is now a certified award which, in terms of section 143(3) of the LRA, can be enforced as if it were a court order. There are remedies available to a party wishing to challenge an arbitration award, being its rescission or an application to this court to have the award reviewed. A party cannot avoid pursuing these remedies by alleging a breach of an arbitration award. Until set aside, the arbitration award must be complied with. Therefore, both parties’ reference to breach of the settlement agreement in

their papers cannot be correct. In contempt proceedings, the issue is the assertion of the authority of the court and the preservation of judicial process and administration of justice. Even though the applicant has an interest in the enforcement of the arbitration

award, in contempt proceedings the issue becomes one between a respondent and the court.

- [46] It will be recalled that when I heard oral argument on 15 May 2024 I directed the parties to file heads of argument addressing specifically the issue of the concept of 'repudiation of court orders'. None of the case authorities that the parties cited in their heads of argument deal with the specific issue of the alleged repudiation of court orders but rather deal with the general principles of repudiation and estoppel. Therefore, those case authorities were of no assistance to the court.
- [47] I find that the defences of repudiation and estoppel, on the facts of this case, are therefore misconceived and cannot assist the respondents in resisting a final order of contempt being granted against them.
- [48] Even if I am wrong that the defences of repudiation and estoppel cannot be raised on the facts of this matter, I am also of the view that the defences would still fail as the respondents failed to prove that they offered the applicant a position or positions which he refused.
- [49] To start with, the letter of 19 May 2022 was so vague that its contents could not on any interpretation be construed to contain an offer for a suitable position or positions, for consideration by the applicant. There is simply no offer tabled in that letter, other than a reference to projects in three provinces where the applicant could be deployed. The respondents ought to have specified the positions available at these projects for the applicant's consideration. In saying this, I am mindful that the letter refers to a meeting to take place to discuss positions that the applicant could be considered for. But the positions could have been identified in the same letter, in the same way that the applicant was informed that the Supervisor position was no longer available for the reasons given.
- [50] Another reason which supports the conclusion that the disobedience of the certified award was willful and mala fide is that it had been arranged that on 25 May 2022 the applicant will undergo a medical assessment for the position of Supervisor, which he occupied prior his dismissal. The first respondent cancelled the scheduled medical assessment under the guise that the position of Supervisor needed to be filled as a matter of urgency due to its operational requirements. But if that is so, why was the medical assessment of the applicant not brought forward?
- [51] Additionally, it is telling that the contract of employment for MK Setumu who was appointed to the Supervisor position records his commencement date as 14 June 2022, and this would have been well after the scheduled date for the applicant's medical assessment. It is more probable than not that the first respondent resolved that it would not appoint the applicant as Supervisor as agreed for nefarious reasons.

[52] But even if the first respondent could, in terms of the certified award, appoint the applicant to another suitable position, the letter of 19 May 2022 to the effect that the first respondent has projects in Gauteng, Eastern Cape and Western Cape where the applicants could be accommodated cannot, on any interpretation, be read to be an offer of a suitable position. What positions were being offered? Precisely where? The answers to these questions could have been provided in the same letter but they are conspicuously missing. A proposal to meet to discuss possible positions does not equate to offering a suitable position. That is why, in my view, the follow-up e-mail of 26 May 2022 to the applicant is of no consequence. It still did not contain any offers of suitable positions that the applicant could consider.

[53] In the heads of argument filed for the respondents, it is submitted that it was the court, *mero motu*, which raised the non-identification of the positions offered to the applicant as problematic. This is not correct. In the applicant's replying affidavit which was served and filed on the day that oral argument was presented, the applicant averred that:

'11.7 Even though my position was filled still I awaited [sic] for an offer from the respondent which never materialized...and no formal offer was ever brought to me by the respondents.

...

12.2 The respondents never offered any alternative positions and as such there is no offer that I rejected...

12.3 I submit that no job offer was given to me...

17.3 Further, without bothering this Court with repetitions, on allegations of the respondent having offered me alternative position, I still stand by my submissions made at paragraph 12.

19.3 The respondents are to demonstrate to this Court how, when and by who the offer was made.'

[54] Therefore, it was always the applicant's case that no alternative positions were offered to him, even before the court posed these questions during oral argument. But more importantly, given that contempt proceedings are a matter between the court and a respondent,[3] it is in my view appropriate in such matters for the court to ask pertinent questions in order to establish whether reasonable doubt has been created that a respondent was not willful and *mala fide*.

[55] A further relevant consideration is the first respondent's offer that the applicant accepts a settlement amount in lieu of being re-instated in the event that he did not wish to be considered for a suitable position in the three specified provinces. The applicant could not be expected to consider his options in the absence of an offer for a specific position in a specific province

being offered to him.

- [56] Then there is the letter of 14 July 2023 to Eilers Attorneys. That letter is annexed to the respondents' answering affidavit to deal with the allegation that the letter from Eilers Attorneys dated 7 July was not responded to. In my view, that letter serves another crucial purpose in these proceedings, which assists the court in determining whether the respondents have created reasonable doubt that their non-compliance with the certified award was wilful and mala fide.
- [57] In it, the respondents' attorneys communicated, unequivocally, that an employee who refuses an offer of an alternative position during a retrenchment process is not entitled to severance pay. Even if this was not in a retrenchment context, the message was that because the applicant had refused to accept the alternative position offered to him, he would not be paid anything.[4] But more importantly, the letter further recorded that an employment relationship between the parties was no longer feasible as the trust relationship had irretrievably broken down due to the applicant's refusal of an alternative offer and the shocking defamatory remarks your client made against our client.
- [58] Therefore, the respondents resolved that they would not comply with the terms of the certified award for the reasons that they set out in this letter. Unfortunately, those reasons do not carry any weight for purposes of creating reasonable doubt of wilfulness and mala fide on the part of the respondent. Notably, even if in that letter the respondents reserved the right to respond to all the allegations made in Eilers' letter of 7 July 2023, the response does not put forward the defences of 'repudiation' and 'estoppel' that were put up in the answering affidavit resisting a contempt of court order. It would appear that these defences were the last-minute creative work of the respondent's attorneys when their clients were confronted with the order of 18 April 2024 granting interim relief against them.
- [59] I am satisfied that the respondents have not created reasonable doubt which would have the consequence that this court refuses the contempt application.
- [60] The next step is consideration of the relief to be granted.

Relief

- [61] The applicant sought an order holding the respondents in contempt of court, coupled with an order incarcerating the second respondent for a period, alternatively, an order that the respondents pay a fine, and in the further alternative, any other alternative relief. In my finding, the relief that is just and equitable is one holding the respondents to be in contempt of court and a suspended fine on condition that the respondents comply with the terms of the certified award.
- [62] I also have to address the issue of costs.
- [63] The applicants sought a punitive costs order against the respondents who were fully aware of the certified award but failed to comply with its terms. The costs sought are on an attorney and client scale.

- [64] In the answering affidavit, the respondents did not address this request, other than to allege that they could not be found in contempt of court and therefore the application fell to be dismissed with costs. However, in its heads of argument, the respondents seek costs against the applicant also on a punitive scale, on the grounds that I deal with next.
- [65] The first issue is the alleged non-service of the contempt application on the respondents. In terms of clause 13 of the Practice Manual of the Labour Court of South Africa[5], contempt applications are brought ex parte. This means that a rule nisi can be granted without notice to a respondent, as happened in this case. A respondent wishing to oppose the grant of final relief has a right to appear on the return date, after having been served with the application and court order, and oppose the relief sought, as happened in this case.
- [66] The respondents also take issue with the false assurances given by Eilers Attorneys that there were no litigious matters against the respondents. Other than the July 2023 correspondence from Eilers attorneys, the contempt application dated November 2023 was drawn up with the assistance of the applicant's current attorneys of record, Mphatlalazana Attorneys. Without a version from Eilers Attorneys who in any event did not file any document in court on behalf of the applicant, I am unable to find that the applicant must be held responsible for what Eilers Attorneys might or might not have said to the respondent's attorneys.
- [67] Even if the above-stated submissions were relevant considerations on the question of costs, which they are not, the respondents have not made out a case for costs against the applicant.
- [68] On the contrary and in my view, an order that the respondents be ordered to pay the applicant's costs on a party and party scale complies with the requirements of law and fairness. Even though the respondents had taken the honourable step of resolving the matter amicably and signing the settlement agreement, there was no follow-through. Even if the respondents felt they had valid reasons for not implementing the terms of the settlement agreement, they at least ought to have taken steps to oppose the two applications filed at the CCMA following signature of the settlement agreement. Despite being aware of those proceedings, the respondent folded its hands until it was confronted with this application.
- [69] More than two years after the settlement agreement was concluded, and more than a year after the arbitration award was certified, the applicant has not seen the benefits he is entitled to in terms of the arbitration award. As at November 2023 when he deposed to the affidavit in the contempt application he remained unemployed. He has been put through the trouble of paying attorneys to enforce the agreed terms of a certified award, unnecessarily so. There is no reason why he must be left out of pocket in respect of those expenses.
- [70] In the premise, I make the following order:

Order

1. The first and second respondents are guilty of contempt of court.

2. The first and second respondents are directed to pay a fine in the amount of R100 000,00 to the Registrar of the Johannesburg Labour Court within fourteen (14) calendar days of this order, which fine is suspended on condition that the first and second respondents comply with the terms of the certified award before the expiry of the 14-day period by re-instating the applicant into the position of Supervisor (if still available) or a suitable position, subject to the applicant undergoing a medical examination to be arranged by the first and second respondents within seven (7) calendar days of this order.
3. Payment of a fine in terms of paragraph 2 above does not have the effect of absolving the first and second respondents from complying with the terms of the certified award, which the respondents are still required and obliged to comply with.
4. The first and second respondents are ordered to pay the applicant's costs on a party and party scale, jointly and severally, including the costs of counsel.

T Gandidze

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Ms. T Malungeni

Instructed by: Mphatlalazana Attorneys

For the Respondent: Mr Christoff Dames

Instructed by: Van Heerden & Krugel

- [1] Act 66 of 1995, as amended.
- [2] See: Secretary of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State v Zuma & Others [2021] ZACC 2; 2021 (5) SA 1 (CC) para 37.
- [3] The respondents referred to the relevant case authority on this issue in their heads of argument, that is *Gunn v Hoogenyk and Another* [2023] ZALCJHB 130; [2023] 8 BLLR 787 (LC).
- [4] The respondents place reliance for this submission on what the court stated in *Gunn v Hoogenyk* referred to above without pointing out that in that matter, the court refused to follow the principle espoused by Prinsloo J that failure to tender services within a reasonable time had the effect that employees could not succeed in their contempt applications.
- [5] Effective 1 April 2013.

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