

SOUTH AFRICA / JUDGMENT

# Dlamini v City of Tshwane Metropolitan Municipality (J944/20) [2023] ZALCJHB 192 (19 June 2023)

[2023] ZALCJHB 192

## COURT

Labour Court Johannesburg

## BEFORE

Tlhotlhamajane

## CASE / FILE NUMBER

J944/20

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

**Source record****IN THE LABOUR COURT OF SOUTH  
AFRICA, JOHANNESBURG****Not reportable****Case No: J944/20**

## In the matter between:

UMASHI

SAMSON DLAMINI

Applicant

And

THE

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

Delivered: This

judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 19 June 2023

---

**JUDGMENT**

TLHOTLHALEMAJE, J

Introduction and background:

- [1] The applicant seeks an order in terms of section 158(1)(c) of the Labour Relations Act[1] (LRA) to have the arbitration award issued on 11 October 2018 and varied on 24 April 2019 under the auspices of the South African Local Government Bargaining Council (SALGBC) under case number PMD121611 BE, be made an order of Court.
- [2] The arbitration award and its variation are not placed in dispute by the respondent. In terms of the award, the respondent, having been found to have committed an unfair labour practice against the applicant as it has inconsistently applied its remuneration policy and application of benefits to employees at the same level of Deputy Chief of Police, was ordered to adjust and rectify the applicant's benefits, travel allowance and his 13th cheque from the date of approval by the respondent's City Manager. The amounts as agreed between the parties were quantified as per the varied award, and effectively the respondent had to pay to the applicant, an amount of R1 332 080.00. The applicant contends that the respondent failed to pay the said amount.
- [3] The SALGBC subsequently issued an enforcement order, and the applicant conceded that the respondent has since paid to him, and amount of R1 332.080.00. He however contends that the respondent has failed to pay the full mora interest as per the variation award. To this end, he alleges that the respondent is indebted to him in the amount of R383.595.48, and further that his salary has not been adjusted as per the arbitration award.
- [4] This Court is enjoined with wide powers in terms of the provisions of section 158(1)(c) of the LRA to make arbitrations awards and/ or settlement agreements its orders. The Labour Appeal Court (LAC) in *South African Post Office Ltd v CWU obo Permanent Part-Time Employees*[2] outlined the principles that Courts must take into consideration when exercising its discretion under section 158(1)(c) of the LRA. Thus, this Court must be satisfied that at the very least the award satisfies the criteria set out in section 142A of the LRA; that the award is sufficiently clear to have enabled the defaulting party to know exactly what it is required to do in order to comply with it; and, that there has not been compliance by the defaulting party with the terms of the award.
- [5] Furthermore, it was reiterated by the LAC in *Greater Taung* that once satisfied that these conditions are present, the Labour Court must exercise its discretion in favour of granting or refusing the order. In so doing, it must take into account "all relevant facts and circumstances" that are "necessary to satisfy the demands of law and fairness"[3].

Evaluation:

- [6] Against the above principles, it becomes patently clear from the respondent's opposing affidavit and the applicant's pleadings and the submissions made on his behalf, that this application ought not have burdened this Court. My conclusions in this regard are based on the following considerations;
- [7] The respondent correctly pointed out that in the Notice of Motion, the applicant sought an order making the award and its variation, an order of Court, whilst at the same time he seeks a payment of what he deemed to be interest that was due to him. The respondent correctly submitted that such relief cannot be competent in circumstances where the amount as per the varied award, was paid. I did not understand the applicant's case to dispute the fact that indeed an amount of R1 332 080.00 was paid in July 2019, followed by a further amount of R108 000.00 paid in October 2020.
- [8] The applicant however refuted that he seeks payment of R383 595.48, and that what he in fact persists with is for the respondent to adjust and rectify his future benefits including his salary notch, so that he is on par with his peers. The first submission is disingenuous. This is so in that at paragraph 7.9 of his founding affidavit, he clearly stated that the respondent is indebted to him in the said amount, which amount was calculated as per the variation order, together with interest. It appears that the applicant was bent on adapting his case as it suited him, depending on what the respondent's responses were.
- [9] An equally disingenuous claim by the applicant was that the amount of R383 595.48 or payment of interest was as per the varied award. 'Annexure USD 2' to the founding affidavit is the variation award, in which the SALGBC specified how the amount of R1 332 080.00 was computed as agreed between the parties. An amount of R38 339.90 in respect of a 13th cheque payment/bonus was also added in that award. There is nowhere in that award where an additional amount in respect of anything else as claimed by the applicant is mentioned.
- [10] In the main award, the respondent was ordered to adjust, alternatively rectify the applicant's benefits inclusive of what is termed 'Unifix allowance', travel allowance and 13th cheque. Since the variation, other than the payments already mentioned above, the respondent's contention is that it has
- also adjusted all three benefits that the applicant is entitled to as per the award.
- [11] Having had regard to all the relevant facts and circumstances of this case, clearly there is no basis for the order sought by the applicant. The respondent is correct in its submissions that what the applicant in effect seeks from this Court with this application is impermissible. His major complaint appears to be that despite the necessary adjustments as per the award, he nonetheless seeks to enjoy the same benefits or remuneration as his peers, whose terms and conditions obviously must be different to those of his, even if they occupy the same positions. As was pointed out in Court, the comparators are individuals that started earlier in the same positions hence there cannot be the same earnings/benefits in the light of those individuals having been entitled to salary

progressions over the years. It is equally ludicrous for the applicant to have accepted that the adjustments were only made regarding the benefits, yet still insists that no such adjustments took place.

[12] If however, the applicant persists that he should have been on par with his comparators cent-for-cent and for all intents and purposes, clearly that is a separate dispute, that ought not have burdened this Court within the context of this misconceived section 158(1)(c) of the LRA application.

[13] It is therefore concluded that the respondent in this case has fully complied with the terms of the arbitration award as varied, and there is no basis either in law or fairness, that enjoins this court's discretion to make that award its order in terms of section 158(1)(c) of the LRA.

[14] This application clearly ought not have been before the Court in the light of the common cause facts and conclusions reached herein. The applicant, or at least his attorneys of record, were aware or ought to have been aware that the respondent had done all that was required of it to comply with the award, yet persisted with this application despite being informed that there was full compliance. Clearly the respondent was compelled to incur costs in defending an application which ought not have been before the Court. It is in this regard that I am of the view that the requirements of law and fairness dictate that the applicant be burdened with costs.

[15] Accordingly, the following order is made:

Order:

1. The Applicant's application in terms of section 158(1)(c) of the LRA is dismissed with costs.

Edwin Tlhotlhamajje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: B.K. Hlangwane, instructed by Hlongoane Attorneys. For the Respondent: T.M. Malatji, instructed by Mponyana Ledwaba Attorneys.

[1] Act 66 of 1995, as amended.

[2] [2013] ZALAC 20; (2014) 35 ILJ 455 (LAC); [2013] 12 BLLR 1203 (LAC) at para [21]; Greater Taung Local Municipality v South African Local Government Bargaining Council and Others

[2023] ZALAC 1; (2023) 44 ILJ 761 (LAC) (16 January 2023) at para 11

[3] Ibid at para 15

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.saflii.org/za/cases/ZALCJHB/2023/192.html>

**CASE PAGE**              <https://chat.esheria.ai/case-law/south-africa/dlamini-v-city-unknown-topic-alcjhb-2023>

Prepared on 11 October 2026 · Esheria