

SOUTH AFRICA / JUDGMENT

Kekana v Education Labour Relations Council and Another (2023/04447)

[2024] ZAGPPHC 152 (19 February 2024)

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COURT

North Gauteng High Court, Pretoria

BEFORE

RB Mkhabela

CASE / FILE NUMBER

2023/04447

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IN

THE HIGH COURT OF SOUTH AFRICA,
GAUTENG

DIVISION, PRETORIA

CASE

NO: 2023/04447

(1)

REPORTABLE: YES/ NO

(2)

OF INTEREST TO OTHER JUDGES: YES/ NO

(3)

REVISED.

DATE:

19/02/2024

SIGNATURE

In

the matter between:

SAMUEL

SELLO KEKANA

Appellant

and

EDUCATION

LABOUR RELATIONS COUNCIL

First Respondent

GAUTENG

DEPARTMENT OF EDUCATION

Second Respondent

JUDGMENT

MKHABELA AJ:

- [1] This is an appeal against an order that I granted on 19 July 2023 removing the opposed application from the roll on the ground that the High Court does not have jurisdiction to hear an application that had been refused by the Labour Appeal Court as reflected by the history of the application of which I will illustrate herein below.

Background

facts

- [2] It is common cause that the appellant, an educator since January 1986, was dismissed on 6 October 2017 pursuant to a disciplinary enquiry as well as an appeal hearing into allegations of misconduct as envisaged in Section 18(3)(1) of the Employment of Educators Act[1]. The allegations leading to the appellant's dismissal were as follows:
- 2.1 He failed to carry out a lawful instruction by refusing to teach learners in Grade 10 and 11 in the area of Mathematics as assigned to him.
- 2.2 On 29 July 2016, and whilst on duty, he seriously assaulted a Mr S Magashane, a Labour Relations Officer employed by the second respondent by spraying him with spray in his face.
- [3] The Arbitrator found that the appellant's dismissal was substantively fair but procedurally unfair, and ordered the Department to pay him compensation in the amount of R10 175.87.
- [4] Dissatisfied with the Arbitrator's award, the appellant referred the award to the Labour Court for review.
- [5] I am indebted to the crisp judgment of my brother, Tlhotlhamaje J whose summary[2] of the facts indicates that the award was issued on 14 March 2018 and the review application to the Labour Court was launched on 7 August 2019. This was a delay of approximately 16 months.
- [6] As already alluded to, the Labour Court dismissed the appellant's review application on 1 November 2021.
- [7] A subsequent application for leave to appeal to the Labour Appeal Court was also dismissed on 17 January 2022 by the labour Court.
- [8] Thereafter, the appellant petitioned the Labour Appeal Court for leave to appeal the Labour Court judgment. This was also unsuccessful. So was a further attempt[3] to seek leave to appeal to the Constitutional Court.

- [9] For some reason known only to the appellant, he instituted motion Court proceedings seeking exactly the same relief that he had sought and was unsuccessful from the three previous Courts, namely the Labour Court, the Labour Appeal Court and lastly the Constitutional Court ("the three Courts").
- [10] When the appellant appeared in person before me on 19 July 2023, I took the liberty to engage the appellant as patiently as I can and taking into account his right to dignity as enshrined in the Constitution. I attempted to reason with the appellant and to apprise him of the fact that the High Court is not competent to sit as a Court of Appeal against the decisions of the three Courts.
- [11] I got the impression that my views that the High Court does not have jurisdiction to sit as an Appeal Court against the decisions of the three Courts resonated with the appellant and that the appellant was in agreement that the matter had to be removed from the roll. Furthermore, the appellant confirmed the history of the matter and even directed me to the Labour petition in terms of which his application for leave to appeal the Labour Court's decision was refused. I therefore had no illusions about the ability of the appellant to understand what I was explaining to him in respect of the matter.
- [12] I was therefore taken aback by the appellant's complaint to the Judge President[4] which, inter alia, reads as follows:
- "The matter was called in the morning and the judge suspended the matter until tea break and I was alone in Court with only his deputies. I suspect foul play. I am requesting for your intervention to clarify the confusion I find myself in based on the issue of jurisdiction."
- [13] Eventually, I heard the application for leave to appeal my order removing the matter from the opposed motion roll on 19 July 2023.
- [14] In the light of the above rendition of the history of the matter and the fact that the appellant was not supposed to have instituted the current court proceedings in this Court on 19 July 2023, I deem it unnecessary to give reasons as to why the High Court does not have jurisdiction to hear the matter. The facts speak for themselves.
- [15] The appellant must just stop abusing the Court process. Certainly he ought to know that since the Constitutional Court and the Labour Appeal Court had turned down his application for leave to appeal the Labour Court's decision, it is the end of the road for him as far as his legal remedies are concerned at least in the courts of this country.
- [16] The appellant's disingenuous and devious attempt to cast aspersion against the judiciary by alleging "foul play" in removing his application from the roll must be condemned. It is clearly not borne by the factual background of the appellant's legal woes pertaining to his unsuccessful attempt to overturn the Labour Court's decision.
- [17] In the result, the following order is made:

1. The application for leave to appeal the order removing the opposed application on 19 July 2023 is refused given its nullity in the first place.
2. There is no order as to costs.

RB MKHABELA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 19 February 2024.

COUNSEL FOR THE APPELLANT: APPEARED IN PERSON DATE OF THE HEARING: 10
NOVEMBER 2023 DATE OF JUDGMENT: 19 FEBRUARY 2024

- [1] Act 76 of 1988 as amended.
- [2] The Learned Judge heard the application for review application, considered the excessive lateness of the review application as well as the merits and declined to condone the excessive lateness in the light of poor prospect of success.
- [3] The petition to the Labour Appeal Court is recorded under case number JA 8/22 and the Constitutional Court case number is CCT107/22

respectively. The petition to the Labour Appeal Court was refused on 5 April 2022 and the Constitutional Court subsequently refused leave to appeal as well as an application to rescind its own order. Thereafter the appellant escalated his complaint to various

independent bodies, including the Judicial Service Commission and the Public Protector. Needless to state his complaint was rejected.
- [4] Email sent to the Judge President, dated 20 July 2023.

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Prepared on 10 October 2026 · Esheria