
SOUTH AFRICA / JUDGMENT

Leeto v Ditsobotla Local Municipality and Another (J2308/15) [2016] ZALCJHB 172 (9 May 2016)

[2016] ZALCJHB 172

COURT

Labour Court Johannesburg

BEFORE

Nkutha-Nkontwana

CASE / FILE NUMBER

J2308/15

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No J2308 /15

In the matter between:

DINTWE JEREMIAH LEETO

Applicant

and

DITSOBOTLA LOCAL MUNICIPALITY

First Respondent

SS NNETE (ACTING MUNICIPAL MANAGER)

Second Respondent

Decided in chambers

Delivered: 9 May 2016

JUDGMENT:

LEAVE TO APPEAL

Nkutha-Nkontwana, AJ

Introduction

- [1] This is an application by the first and second respondents for leave to appeal against the judgment that I handed down on 23 December 2015. In the judgment, the Applicant's suspension was declared invalid and unlawful and, accordingly, set aside. The first respondent was, accordingly, ordered to reinstate the Applicant with immediate effect and to comply with the Applicant's contract of employment and conditions of service.
- [2] This application was launched on 18 January 2016. On 22 January 2016, the applicant filed his notice of intention to oppose this application together with a notice in terms of Rule 11 of the Rules of Court read together with Rule 7 of the Uniform Rules of High Court.
- [3] In essence, the applicant is challenging the authority of respondents' attorneys of record to act on behalf the first respondent in launching this application.

Rule 7 of the Uniform Rules of High Court

- [4] Rule 7(1) provides that:

'... a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.'

- [5] Even though in terms of the provisions of Rule 7 of the Uniform Rules of High Court, an attorney instituting proceedings on behalf of a litigant is not required, as a matter of course, to file a power of attorney, once challenged, he is required to satisfy the Court that he is properly authorised to act on behalf of the litigant. As such, he may not act further until he produces a proof of his mandate which is usually done by way of producing a power of attorney.[1]
- [6] In the present case, the applicant acted within ten days required by Rule 7 to dispute the authority of the respondents' attorneys

to represent the first respondent. However, to date, the respondents' attorneys failed to deliver the power of attorney or any other proof to satisfy the Court that they are duly mandated to act on behalf of the first respondent.

- [7] The only inference I can draw from the conduct of the respondents' attorneys, in so far as the first respondent is concerned, is that they are not duly mandated. Also, the same attorneys failed to take any further steps to prosecute this application in so far as the second respondent is concerned. No written submissions have been filed in accordance with Rule 30(3) of the Rules of Court.
- [8] Consequently, the matter is struck off the roll with no order as to costs.

Nkutha-Nkontwana AJ

Acting Judge of the Labour Court of South Africa

[1] First Rand Bank Ltd v Fillis and Another 2010 (6) SA 565 (ECP) at para 12 and 13.

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