

SOUTH AFRICA / JUDGMENT

Makhamba v Moletsane and Another (JR648/11) [2014] ZALCJHB 411 (20 October 2014) [2014] ZALCJHB 411

COURT

Labour Court Johannesburg

BEFORE

O Mooki

CASE / FILE NUMBER

JR648/11

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: JR648/11

NOT REPORTABLE

In the matter between:

MZWANDILE JAMES MAKHAMBAAAAAAAAAAAAAAAAAAAAAAAAAAAA Applicant

and

LEBOGANG YVONNE MOLETSANE.....First Respondent

KOPANONG LOCAL MUNICIPALITY.....Second Respondent

Heard: 29 August 2014

Order: 29 August 2014

Reasons:

20 October 2014

Summary: Contempt proceedings- failure to comply with court order

REASONS

FOR THE ORDER

MOOKI AJ

[1] This matter came before the court on 29 August 2014. The court made the following order:

"IT IS ORDERED THAT:

1 The First Respondent is in contempt of this Court for failing to comply with the order of this Court dated 30 May 2014;

2 The Registrar of the Court is directed to issue a warrant to detain the First Respondent and for the First Respondent to be brought to Court on 31 October 2014 in respect of her contempt and for the First Respondent to further show cause why she should not be committed to imprisonment, alternatively, pay the fine to be determined at the discretion of the Court;

3 Service of this order shall be effected personally upon the first respondent;

4 The First Respondent is ordered to pay costs on the attorney and own client scale;

5. The costs referred to are to be paid by the First Respondent in her personal capacity, such costs are to include the costs incurred for the services of one counsel."

[2] The first respondent is the municipal manager of the second respondent. The second respondent dismissed the applicant on 30 April 2009. The applicant obtained an award in his favour on 30 January 2011. The award obliged the second respondent to reinstate the applicant with effect from 1 March 2011.

[3] The second respondent instituted review proceedings, challenging the award. There was much delay and non-compliance by the second respondent with the rules of this court in prosecuting the review. The applicant brought a Rule 11 application to have the review application dismissed for lack of prosecution.

[4] Basson J dismissed the review application on 4 February 2014. She made an order that:

"11.1 Rule number 11 application is granted.

11.2 The review application is dismissed.

11.3 There is no order as to costs."

[5] The applicant personally served the order by Basson J on the first respondent on 5 February 2014. The first respondent informed the applicant on 5 February 2014 that the second respondent would be consulting with its attorneys on 7 February 2014, with a view to appealing the order by Basson J. No appeal was made. The municipality only sought written reasons for the order. The municipality has done nothing since it obtained the written reasons, which were handed down on 10 March 2014.

[6] The applicant was never reinstated. He then instituted contempt proceedings. The matter came before Molahlehi J, who gave the following order on 30 May 2014:

"IT IS ORDERED THAT:

1. The First Respondent appear in this Honourable Court on 29 August 2014 at 10h00 to show cause why he (sic) should not be found guilty of contempt of court for failing to comply with the order of this Court dated 4 February 2014.
 2. There First Respondent must explain its (sic) conduct by way of affidavit within 10 working days after being served with this order and that same affidavit be submitted to the Applicant.
 3. In the absence of providing an explanation to the satisfaction of the court, or failing to appear in this Honourable Court despite being properly served, there First Respondent be found guilty of contempt and that she be incarcerated for such period as this Honourable Court [deems] appropriate or for the First Respondent to be fined in (sic) an amount the court deems appropriate or other alternative relief.
 4. Point (3) above be [wholly] suspended on [condition] that the First Respondent produce satisfactory proof within 14 days that the Applicant has been retrospectively reinstated to a position similar to the one he held prior to his dismissal on the same terms and conditions of this court order and
 5. The service of this order be effected personally upon the First Respondent."
- [7] The first respondent was notified of the order by Molahlehi J. She became aware of the order on 2 June 2014.
- [8] The first respondent did not file an affidavit as required in the court order of 30 May 2014. Instead, Noxolo Maduba, an attorney instructed by the respondents, deposed to an affidavit on 20 June 2014. Maduba stated in her affidavit that she prepared the affidavit pursuant to the court order by Molahlehi J. Maduba made the following averments in her affidavit:
- 13.1 The court order by Molahlehi J was served on the respondents on 2 June 2014.
- 13.2 She sent a copy of the court order to counsel on 3 June 2014. This was followed by a consultation with counsel on 13 June 2014. Maduba and the first respondent attended the consultation.
- 13.3 Her firm was not given the contempt application, with the result that the respondents had no opportunity to deal with the contents of the order satisfactorily.
- [9] The first respondent deposed to a confirmatory affidavit to the affidavit by Maduba. She confirmed its contents in so far as they related to her. The first respondent deposed to the confirmatory affidavit on 20 June 2014.

- [10] The applicant replied to the affidavit by Maduba. He pointed out that the court order was clear that the first respondent, not any other person, was obliged to appear in court on 29 August 2014 and that she was ordered to file an affidavit explaining her failure to comply with the court order of 4 February 2014. The applicant further pointed out that the first respondent saw it fit to ignore the court order and that she left it to Maduba to explain the non-compliance with a court order.
- [11] The applicant averred that the court should draw a negative inference in the failure or neglect by the first respondent to depose to the affidavit herself and that the Court should find that first respondent failed to comply with the court order.
- [12] The applicant averred that the respondents were intent not to comply with the court order and that this is shown by the first respondent's conduct who sent the applicant text messages as early as February 2014 that the municipality was going to appeal the order Basson J. No such appeal was made.
- [13] It was submitted on behalf of the applicant that first respondent was served with the contempt application on 7 August 2014 and that she still failed to explain her conduct as required in the court order.
- [14] The contempt application came before court on 29 August 2014. The first respondent did not attend in court. She also had not filed an affidavit as required in the order by Molahlehi J.
- [15] Mr Mokgothu appeared for the first respondent. He indicated to the court that he was briefed only to seek a postponement. The postponement was to allow the first respondent to consult with senior counsel who was otherwise engaged in a different court. The respondents had engaged the services of both senior and junior counsel. The postponement was sought to allow senior counsel to consult with the first respondent and, following such consultation, to assist the first respondent in preparing an affidavit in response to the order by Molahlehi J.
- [16] I enquired from Mr Mokgothu why the first respondent required the assistance of senior and junior counsel to comply with the terms of the order by Molahlehi J. He replied that the first respondent was entitled to the benefit of assistance by counsel. I suggested to Mr Mokgothu that I did not consider the order to require that the first respondent be held by hand for purposes of complying with the terms of that order. I also indicated to Mr Mokgothu that there are hundreds of advocates and that I did not see why the first respondent had to wait for a particular advocate. The attorneys for the first respondent wrote to the applicant's attorneys on 4 August 2014, indicating that their counsel was unavailable on 29 August 2014 and proposed different dates for the hearing of the application. The applicant's attorneys replied on 5 August 2014. They refused to accede to the application being heard on a different date. They also invited the respondents' attorneys to bring a substantive postponement application if they did not wish the application to be heard on 29 August 2014. There was no response to this letter. The respondents did not make a substantive postponement application.

- [17] I enquired from Mr Mokgothu as to the whereabouts of the first respondent. He indicated to the court that she was in Bloemfontein. She was aware that the contempt application was being heard on 29 August 2014. There was no explanation why the first respondent did not attend in court.
- [18] Mr Mokgothu submitted to the court that he was briefed only in respect of the postponement application. He did not know the details of the specific allegations against the first respondent. I refused the postponement.
- [19] The first respondent was served with the court order on 2 June 2014. She has been aware of the terms of the order since that date. She has been aware, since 2 June 2014, that the Court ordered her to explain her conduct and that she had to be present in Court on 29 August 2014. Her attorneys were told on 5 August 2014 that the application was proceeding on 29 August 2014 and that she would have to make a substantive postponement application if the matter was not to be heard on that day. She did not make the application. Her attorney complained that the first respondent did not have the contempt application in order to comply with the court order. She received the contempt application on 7 August 2014. She was aware that the application was being heard on 29 August 2014. She nonetheless chose to remain in Bloemfontein.
- [20] It is manifest that the first respondent has no regard to the orders made by this Court. She conducted herself with total disregard of the order of 30 May 2014. I do not accept that she was unable to give the explanation as required in that order. The applicant points out, in his replying affidavit, that the first respondent was the acting manager in the corporate services of the municipality at the time leading to the dismissal of the applicant. She is now the municipal manager. I cannot conceive of any good reason why the first respondent, given her first-hand knowledge of events leading to the dismissal of the applicant, together with her office as the municipal manager, is unable to give the explanation required of her in the court order. I also cannot conceive of any good reason why she requires the assistance of counsel, let alone, a senior and a junior counsel, to give the explanation contemplated in the order by Molahlehi J. This apart from the fact that she consulted with counsel as far back as 13 June 2014.
- [21] I consider that the first respondent adopted a carefree stance towards the court order by Molahlehi J. I also consider that the first respondent was able to comply with the terms of that order but chose to ignore the order. This is exemplified by the first respondent remaining in Bloemfontein notwithstanding the fact that she knew that the court order required her to be present in court on 29 August 2014. The fact that a postponement was being sought did not excuse her from attending in court.

- [22] It is an affront to the administration of justice when court orders are ignored. This is more so when public officials, such as the first respondent, ignore such orders. Ignoring court orders renders courts impotent. The court must, on that account, indicate in the strongest measures possible, its displeasure at any conduct calculated to render court orders nugatory. It is on these bases that I determined the first respondent to be in contempt.
- [23] I made an order that the first respondent pay the costs and that she pay such costs in her personal capacity. There is no reason why the public purse should be strained any more than it already is by having the second respondent pay the costs of the application on 29 August 2014. This is more so because the application on 29 August 2014 was directed at the first respondent, not the municipality. The public should not have to carry the burden of costs wasted by the first respondent's failure to comply with the court order of 30 May 2014.
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O Mooki

Judge of the Labour Court (Acting)

APPEARANCES:

For the Applicant: D Mtsweni

Instructed by: Ngqumshe M Attorneys

For the First Respondent: Mr Mokgothu

Instructed by: MAduba Attorneys

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