

SOUTH AFRICA / JUDGMENT

# Mbewu v OR Tambo District Municipality and Another (3208/2024)

## [2024] ZAECMHC 68 (20 August 2024)

### [2024] ZAECMHC 68

## COURT

Eastern Cape High Court, Mthatha

## BEFORE

Zono AJ

## CASE / FILE NUMBER

3208/2024

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## Policy

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION –

MTHATHA)

Reportable/Not Reportable

Case no.: 3208/2024

Matter heard on: 06 August 2024

Judgment delivered on: 20 August 2024

## In the matter between:

PHENDULE MBEWU

Applicant

And

OR TAMBO DISTRICT MUNICIPALITY

1st Respondent

THE MUNICIPAL MANAGER: OR TAMBO

DISTRICT MUNICIPALITY

2nd Respondent

## JUDGMENT

Zono AJ

### Introduction

- [1] The applicant approached this court on urgent basis on 06th August 2024. The essential relief the applicant is seeking in the notice of motion, stripped of wordiness, is firstly the reinstatement or payment of applicant's salary and associates emoluments for the month of July 2024; and the removal of key block fitted in his office door. Applicant's case is that the respondents unlawfully terminated or refused to pay applicants salary and associated emoluments for the month of July 2024; and that they unlawfully placed key block in the door of the applicant's office.
- [2] The legal basis of applicant's case, so the contention goes, is that there is a valid employment contract in existence between the applicant and the respondents, which contract of employment gives rise to a number of rights in favour of the applicant and some obligations are imposed by the same contract on the respondents. Various allegations are made in the founding affidavit to underscore this point. It is contended that the respondents breached the terms of employment agreement.
- [3] In paragraph 7 of the founding affidavit the applicant contends as follows:
- "7. In this application I seek the enforcement of the contractual obligations I have with the respondent. This is specific performance*

arising out of the contract I have with the respondents. I will demonstrate inter alia: -

7.1 The existence of a contact

7.2 The performance on my part; and

7.3 The breach by the respondents."

- [4] In paragraph 27 of the founding affidavit the applicant states as follows: -

*"27. Regard being had to the fact that: -*

27.1 I have a valid contract of employment with the first respondent;

27.2 My contact of employment is valid and legally enforceable;

27.3 I have rendered and I continue to tender to render (sic) my services to the first respondent in line with my job description.

27.4 The respondents' conduct constitutes a breach of contract because: -

27.4.1 It deprives me access to my work station; and

27.4.2 they refuse to pay salaries despite being obliged to do so in line with the employment agreement.”

- [5] There are various other allegations underscoring a point that the applicant is seeking enforcement of the terms of his employment contract with the respondents.
- [6] The matter is opposed by the respondents. In doing so they filed both the notice to oppose and answering affidavit. In the answering affidavit the respondents raise various issues to assail applicant's case. Not only a litany of points in limine have been raised to assail applicant's case, the respondents coincidentally challenge the merits of the applicant's case. The upshot of respondents' opposition is that applicant's case is without merit and should fail.
- [7] In paragraph 7 of the answering affidavit the second respondent gives a structure of their affidavit which structure forms the basis of their opposition. Applicant's application is strongly opposed on the basis of the following headings: -

7.1 Jurisdiction

7.2 Urgency

7.3 Wrong or incorrect legal process followed;

7.4 Forum shopping

7.5 Elements of an interdict not fulfilled

7.6 claim not quantified and not readily ascertainable.

7.7 non joinder

7.8 Response to contentious issues; and

7.9 Relief sought by the respondent.

- [8] It is pivotal to record at this early stage that the respondents refute the validity of applicant's case on merits on the basis that there is no contract in existence between the parties. I have observed that factual basis of this defence is intertwined with some, if not all, of the points in limine. This will be apparent as I proceed with the points in limine.
- [9] However it is vital that I advert to few paragraphs in the answering affidavit where the respondents are denying the existence of the contract and consequently denying that there is a breach at their instance.
- [10] In the answering affidavit, the second respondent contends as follows:-

*“ 39. There is no contract in existence between the parties as I have clarified in this affidavit before how the contract was terminated*

*and has not been revived.*

40. Notwithstanding the judgment Jolwana J, which was delivered on 16th July 2024, there are no contractual obligations between the parties. Specific performance therefore misplaced and cannot obtain (all sic)
41. I specifically deny that there is breach of contract by the respondents.”
- [11] As I have stated above, some of the facts will become clear when dealing with the points in limine.

#### Factual Background

- [12] Whilst it is a common cause that on 07th June 2016 the applicant entered into a written contract of employment with the respondents, it was a salient term of the agreement that the respondents would give the applicant the work station to perform his duties as a Manager: - IGR IDP Municipal Support and International Relations. The respondents would further pay the applicant his salary on 25th day of every Month. Consequently, the applicant was given an office at Magwa Offices and later at Prosperity Building, Office No F-02.
- [13] In November 2020 the applicant was suspended pending disciplinary proceedings that were launched against him for allegedly participated in a strike action. After several postponement of the disciplinary proceedings, the Acting Municipal Manager, Ms Mnyanda penned a letter to the applicant on 05th October 2021 permanently withdrawing, with immediate effect, the charges preferred against him. The applicant then went back to work and worked.
- [14] When Ms Mnyanda's term of acting expired, one Sibusiso Mkize was appointed as a permanent Municipal Manager. On 07th September 2021 Mr Mkize penned a written notice to the applicant advising him of date of hearing of disciplinary proceedings which hearing was set down for 14th and 15th November 2021. Through his Trade Union the applicant advised Mr Mkize in writing on 09th December 2021 that he would not attend the hearing on the basis that disciplinary charges against him were permanently withdrawn. On 10th December 2021 the respondents advised the applicant in writing that the disciplinary proceedings would proceed notwithstanding that there was withdrawal of disciplinary charges, as he was perceived to be facing disciplinary charges.
- [15] On 09th March 2022 the applicant received a letter advising that on 24th February 2022 he has been found guilty of the charges preferred against him and his contract of employment was terminated with immediate effect. The matter was thereafter referred, at the instance of the applicant, for arbitration to South African Local Government Bargaining Council (SALGBC).
- [16] On 20th August 2022 the Commissioner (SALGBC) issued an award or rulings in the following terms: -

*“23. The Acting Municipal Manager Ms. N Mnyanda did not act ultra vires i.e acted within her powers in deciding to withdraw the charges*

levelled against the applicant on 05th October 2021.

24.The reinstatement of the charges through a notice sent to the applicant on the 07th December 2021 was illegitimate and wrong in law.

25.The disciplinary enquiry of the applicant that was arranged and set on the 14th and 15th of December 2021 was null and void. This means that the status of the applicant is as if he was never dismissed or his services have never been terminated. (my underlining)

26.The respondent is ordered to reinstate the applicant's terms and conditions of employment that existed before the applicant's dismissal or termination on the 09th March 2022. This order is to be applied retrospectively with effect to the said date and his salary and benefits are due effective from this date.

27.I make no order as to costs at this stage." (all sic)

[17] The respondents made an application to this court for the review of their decision to withdraw charges against applicant. Jolwana J dismissed that application with costs in his judgment delivered on 16th July 2024.

[18] On 25th July 2024 the applicant went to his usual workplace and discovered that his office door was fitted with a key block to prevent his office keys from opening the office. Upon enquiry on respondents' security officers, they advised the applicant that they were instructed by the respondents to put or fit the key block in his office door and to deny applicant access to his office as he was not allowed in the respondents' building.

[19] Upon instruction, on 25th July 2024 applicants' attorneys penned a letter to respondents demanding removal of the key block from applicant's office door. Apparently the applicant had not been paid his July 2024 salary and concomitant emoluments as his pay day is 25th of each month. In the same letter of demand applicant's attorneys demanded payment of July 2024 salary which had not been paid. No response to that letter had been forthcoming.

[20] It worths mentioning that paragraph 25 of the Arbitration ward should serve as a guiding light throughout this application and must serve to inform this court and the parties as to the status of the contract of employment between the parties and their employment relations.[1]

[21] Against this background I set out to deal with respondents' points in limine.

### Jurisdiction

[22] The respondents contend that this matter falls within the exclusive jurisdiction of the Labour Court as they contend that the applicant relies on the ruling of the commissioner issued under the auspices of the South African Local Government Council (SALGBC). The contention is that the applicant is enforcing a ruling made under the provisions of Labour Relations Act 66 of 1995. The applicant would only be suited, so the submission goes, in the Labour Court if he brings an application in terms of Section 158 (1) (c) of the Labour

Relations Act to make the ruling an order of court. It is only after that relief has been granted that an applicant would be able to institute Contempt of Court proceedings.

[23] In the final analysis the respondents contend that the Commissioner's ruling is unenforceable as the Commissioner himself lacked jurisdiction to make the ruling he made. The Bargaining Council's ruling is a matter to be considered by the Labour Court should the applicant wishes to enforce same. The court, for the aforesaid reasons, is requested to dismiss applicant's application for lack of jurisdiction.

[24] When, as in this case, the proceedings are launched by way of notice of motion, it is to the founding affidavit which a judge will look to determine what the complaint is. As was pointed out by Krause J in *Pountas' Trustee v Lahanas* 1924 WLD 67 at 68 and has been said in many other cases.... An applicant must stand or fall by his petition and the facts alleged therein and that, although sometimes it is permissible to supplement the allegations contained in the petition, still the main foundation of the application is the allegation of facts stated therein, because those are the facts which the respondent is called upon either to affirm or deny.[2]

[25] The Appellate Division, as it then was, had given general guidelines as to how to approach an issue of jurisdiction raised in limine. Trollip JA [3] made the following dictum as a guideline:

*"I therefore turn to consider whether the Court a quo had jurisdiction in these proceedings according to the general principles of our law. That depends on (a) the nature of the proceedings, (b) the nature of the relief claimed therein or (c) in some cases, both (a) and (b)"*

I will shortly deal with nature of the proceedings and the relief claimed herein.

[26] The Constitutional Court sealed the position about the manner in which the issue of jurisdiction should be approached. Van Der Westhuizen[4] authoritatively and aptly held as follows:

*"75 Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in Chirwa, and not the substantive merits of the case. If Mr Gcaba's case were heard by the High Court, he would have failed for not being able to make out a case for the relief he sought, namely review of an administrative decision. In the event of the Court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the*

determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's

competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion,

but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's

claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction.”

[27] As was held by Diemond JA[5] it is to the founding affidavit the Judge must look to determine what the complaint is; because those are the facts which the respondent is called upon either to affirm or deny;[6] I set out to identify the nature of applicant’s complaint.

[28] The applicant, in his founding affidavit characterises his complaint under the rubric: “The Nature of the Application”:

An enforcement of contractual obligations he has with the respondent. As I have alluded to in the preceding paragraphs, the applicant categorically contends that he has a valid contract of employment with the first respondent, and that contract is legally enforceable. Termination of or refusal to pay applicant’s salary coupled with fitting of a key block on applicant’s office door with a view to denying him access thereto is perceived to be a breach of the terms of employment contract. That is his claim as fact.

[29] The relief the applicant is seeking is another important factor to be taken into account to establish the question of Jurisdiction.[7] In his amended notice of motion the applicant seeks the following order in paragraph 2 thereof:

*“2. An order declaring the respondents’ conduct of: -*

2.1 Failing and/ or refusing to pay the applicant’s salaries and/ or emoluments and other ancillary incentives for the month of July 2024; and

2.2 Placing key block to the applicant’s office being situated at office No. F-02 1st Floor within the first respondent’s establishment and thereby preventing the applicant access to that office to be unlawful and wrongful.

3. An order directing the respondents to:-

3.1 pay the applicant’s salaries contemplated in paragraph 2 above, to the applicant’s chosen banking account..... forthwith.

3.2 Remove the key block contemplated in paragraph 2.2 above.

4. That the respondents are hereby interdicted from: -

4.1 further unlawfully withholding the applicant’s salaries, and

4.2 Further placing key block to the applicant’s office contemplated in paragraph 2.2 above.”

The relief set out above is accompanied by a relief for an order of punitive costs against the respondents.

[30] I am, without a doubt, of the view that this matter concerns the enforcement of the contractual terms which the applicant strongly contends he has with the respondents and are applicable as a result of a valid employment contract that exists between the parties. That is his claim as a fact. I accept that the nature of the proceedings and the relief sought by the applicant in the notice of motion are demonstrative of the fact that the applicant is exacting performance of contract of employment.

[31] The Basic Conditions of Employment Act applies to this matter for purposes of determining the jurisdiction.[8]

Section 77(3) of the Act provides:

*“The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment,*

*irrespective of whether any basic condition of employment constitutes a term of that contract”.* This settles the question of jurisdiction of this court in matters concerning employment contracts.

[32] Nugent JA [9] aptly held that:

*“[59] The claim that was pursued before the CCMA was a claim to enforce the right of an employee not to be dismissed unfairly (what I have called an LRA right) which is enforceable only in a Labour Forum. The claim in this case asserts for enforcement a right emanating from the common law to exact performance of a contract. It is plain that the high courts have the power to consider claims for the enforcement of employment contracts (as does the Labour Court).*

[79]..... In this case it falls within the ordinary power that the high courts have to enforce contractual rights (expressly preserved by the BCEA)”. This application is intended to exact performance of a contract of employment between the parties.

[33] Labour Relations Act[10] confers concurrent jurisdiction to the High Courts in matters arising from employment and from Labour relations. The correct text of section 157(2) (a) is worded as follows:

*“The Labour Court has concurrent Jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental*

*right entrenched in chapter 2 of the constitution of the Republic of South Africa, 1996, and arising from-*

(a) Employment and from Labour relations.”

[34] Accordingly I find that this court is endowed with a jurisdiction to resolve this contractual claim and to enforce common law contractual rights.[11] As a corollary I find that this matter entails enforcement of the terms of a contract of employment.

- [35] I find no merit in respondents' contention that this court does not have jurisdiction. I find no merit in the contention that the applicant is enforcing an award by the Bargaining Council. This was a clear mischaracterization of applicant's case. Nowhere in the whole tenor of the applicant's papers does the applicant seek to rely on the ruling or award of the Commissioner or Bargaining Council of 20th August 2022. The role of factual historical background played by the ruling or award is simply to demonstrate that the employment status of the applicant is as if he was never dismissed or his services have never been terminated. The status quo ante reverted and the contractual position affecting the parties revived, hence the enforcement of the contract of employment.
- [36] Finally on this point, the jurisdictional point cannot succeed and is accordingly not upheld and consequently dismissed.

#### Forum Shopping

- [37] This point is factually intertwined with the point of jurisdiction. The factual scenario underpinning them is the same. They both share a commonality that the applicant should have used remedies available to him in terms of the Labour Relations Act. They share the same view that there is no valid contract of employment between the parties; alternatively, the applicant should have utilised Labour Law forums that would pave the way to applicant's remedies by invoking labour court jurisdiction.
- [38] I find no merit on this point. It accordingly cannot succeed. In the result I dismiss the point of forum shopping.

#### Urgency

- [39] The respondents trace this matter from the 20th August 2022 when the ruling and award by the Commissioner or Bargaining Council was issued. That is consistent with their entire case posited to assail applicant's case. This approach is fallacious and ignores a pertinent case made for urgency by the applicant in his founding papers.
- [40] A crucial paragraph in the founding affidavit to determine the question of urgency is paragraph 24 and 25, text of which reads as follows:

*"24 On or about the 25th day of July 2024, I went to work as usual. On arrival, when I wanted to unlock my office as usual, I discovered that a key block has been placed in my office door thereby depriving me access to that office. I then went to the security personnel of the first respondent and enquired about the key block on my office door. They advised me that the first respondent instructed them to put that key block in that office and never allow me any form of access to that office. Further they told me that the second respondent advised them that I am not allowed within the first respondent's building precinct."*

25. Sequel thereto, I approached my present attorneys of record and advised them of the predicament which I faced on the even date. Indeed, my present attorneys of record penned down a correspondence which they addressed to the respondents and the substance of which was to seek the removal of the key block and the payment of my July 2024 salaries which were due and payable on that day. As for that day my salaries were not paid despite being due and payable to date.”

[41] Indeed the letter of demand dated 25th July 2024 was delivered on the same day at about 14h05 and paragraph 7 of which read as follows:

*“7. We are therefore instructed to demand from you as we hereby do the following: -*

7.1 The removal of the key Block from our client’s office; and

7.5 the immediate payment of our client’s salary for the month of July 2024.”

The respondents were given until the close of business on Friday the 26th July 2024 to respond. No response had been forthcoming. The respondents rudely kept quiet.

[42] The instant proceedings were instituted on 29th July 2024 and service of the papers was effected on the same date at 11:23 upon the respondents. Looking at the aforesaid timelines I find respondents’ point of urgency unmeritorious. The applicant acted with expedition to institute these proceedings. Consequently, I find that this matter is sufficiently urgent to be dealt with as such. Respondents’ point of urgency cannot succeed and is accordingly dismissed.

Claim not quantified and not readily ascertainable

[43] Applicant’s salary and other concomitant emoluments are fixed and regulated by the contract of employment. It is those monetary assets the respondents have been paying to the applicant up to and including June 2024. For this reason, they are known to the respondent and accordingly need no quantification. The applicant’s only desire is to be paid in terms of the contract or that which the contract entitles him. Nothing to be quantified in the act of unlocking and allowing applicant access into his office. The kind of an order the applicant is seeking is an order “ad factum praestandum,” which is an order for specific performance. Accordingly, this point must too fail.

Elements of the interdict not fulfilled

[44] I have earlier alluded to the fact that almost all respondents’ points in limine are inextricably linked to the merits of the case. This one too is eluctably bound up to the merits of this case.

- [45] The provenance of this point is that the applicant has no valid contract with the respondents as the contract of employment existed before dismissal had not been revived. The Commissioner's ruling or award kicks in to negate this point as have been adumbrated above. The Commissioner in the Bargaining Council singularly ruled or found that "the status of the applicant is as if he was never dismissed or his services have never been terminated."
- [46] The applicant is contractually entitled and has a right to his salary and concomitant emoluments on the 25th day of every month. Respondent's office No F-02, First floor at Prosperity building is the office in which the applicant is contractually and legally entitled to discharge his contractual duties. He is contractually entitled to access to that office. The applicant has a clear right in both aspects of his claims which are subject of complaint.
- [47] Consistent with its previous view about the exclusive jurisdiction of the Labour Court to entertain this matter, the respondents contend that the applicant has an alternative remedy to follow the remedies available in terms of the Labour Relations Act 66 of 1995. I have earlier found that this point is unmeritorious as it does not find support of the facts and the law. This point too must fail.
- [48] The aforesaid discussion disposes of all the respondents point in limine. In dealing with these points in limine it became apparent that I have dealt with the merits of the case. That is so because of the nature of the points in limine which are in eluctably bound up with the merits of the case. Little, if any, is remaining on the merits of the case.

## Conclusion

- [49] In the amalgam of all the facts of this case and submissions made, I have come to a conclusion that this matter is sufficiently urgent to warrant hearing on urgent basis. The applicant is accordingly entitled to a leave to be heard on urgent basis in terms of the provisions of Rule 6(12) of the Uniform Rules.
- [50] I have found that there is a valid contract of employment between the parties which contract entitles the applicant to his salary and to all the benefits associated therewith. It is manifestly clear that the applicant brought these proceedings to enforce the contract of employment he has with the respondents. I have rejected respondents' contention that the applicant brought these proceedings to enforce a ruling or an award issued by the Commissioner in the Bargaining Council.
- [51] The relevance of that award or ruling in the instant proceedings is only to demonstrate that applicant's contract of employment was revived and became extant. As a corollary applicant's entitlement to his salary and associated emoluments; and a right to utilize his office to discharge his contractual duties were revived. It is a manifestation, upon proper interpretation of the award/ruling that applicant's contract which became extinct as a result of the unlawful dismissal was resuscitated and ultimately came into existence and had regained its validity retrospectively. Applicant's contractual rights were revived and

accordingly remerged or resurfaced. The revival occurred by operation of the law. Nothing needed to be done by anybody in addition to the award or ruling. Respondents' contentions that there is a necessity of a positive additional step reinstating the applicant is without merit.

[52] In the light of the fact that the entitlement to continue receiving salary payment and to utilize his office, the respondents are obliged to pay applicant's salary and concomitant emoluments and to allow applicant access to his office.

[53] This accords with the fundamental maxim *Ubi jus, ibi remedium* (Where there is a right, there is a remedy).[12] Applicant's rights to his salary and concomitant emoluments, and to utilize his office cannot be exercise without the ability to enforce payment and access to office.

[54] Centlivres CJ[13] stated that :

*"There can to my mind be no doubt that the authors of the Constitution intended that those rights [that is the rights entrenched in the Constitution] should be enforceable by the court of law. They could never have intended to confer a right without a remedy. The remedy is indeed, part and parcel of the right. Ubi jus, ibi remedium."*

[55] On the other hand Holt CJ [14] held that:

*"If a plaintiff has a right he must of necessity have a means to vindicate and maintain it, and a remedy, if he is injured in the*

*exercise or enjoyment of it; and indeed it is vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal."*

[56] It is a common cause that the respondents failed to pay applicant his July 2024 salary with associated emoluments. It is also a common cause that the respondents have denied the applicant access to his office. And lastly, a letter was penned and delivered to the respondents with a view to resolve this matter out of court but to no avail. I am therefore without a doubt that all the requisites for the final interdict are satisfied.[15]

#### Costs

[57] There is no argument against the general Rule that costs should follow the result. The applicant has succeeded in this matter; therefore, costs must follow that result. The respondents are liable to pay applicant's costs.

[58] However, there is vexing aspect of this case. The respondents opted to mount a frivolous opposition in the matter, notwithstanding that there was absolutely no justification cognizable in law for refusing to pay applicant's salary. Equally the applicant was denied access to his office without any legal justification. The manner in which the applicant was denied access was manifestly malicious and humiliating as I will demonstrate herein below.

[59] The second respondent make the following submission in his affidavit:

*“28. .... In summary what occurred is that the applicant arrived on 17th July 2024 without warning and accompanied by his legal representatives wanting to see me. I was not however available. On 18th July 2024 a letter was sent to the applicant advising him not to report for duty for a period of 10 days. Inexplicably he continued to report for duty. As a result of this conduct, the Municipality had no alternative but to lock the office of the applicant. The Acting Security Manager Mr Ayanda Bomela, was also given an instruction to remove the applicant from the premises of the Municipality. On 25 July 2024 the applicant was again seen at the premises of the Municipality and was requested to leave which he eventually did.”*

[60] The second respondent does not tell what would happen after the 10-day period of wait given in the letter of 18th July 2024. It is apparent that the applicant wanted to resolve the impasse that might have been in existence between him and the respondents with the second respondent, but the second respondent inexplicably and rudely did not avail himself for that. This attitude is consistent with the respondents’ failure to respond to applicant’s letter dated 25th July 2024.

[61] It is common cause that the applicant is one of the Managers of the respondents. For him to be dealt with in the manner it happened, that he was instructed to be chased away by the Security officers when there was no evidence of him being violent must have been humiliating not only to him but also to his legal representatives with whom he was going on 18th July 2024. In fact, that conduct was intended to humiliate him. At least the second respondent should have seen the applicant and try to tell him what his views are about his presence in the Municipality’s premises. The second respondent acted in a manner that manifest highhandedness.

[62] At all material times the respondents were aware of the ruling or award of the Bargaining Council dated 20th August 2022. Whilst the ruling set out in paragraphs 23-26 thereof is relevant for present purposes, I wish to pay particular attention to paragraph 25 thereof. The paragraph reads as follows:

*“25 The disciplinary enquiry of the applicant that was arranged and set in the 14th and 15th of December 2021 was null and void. This means that the status of the applicant is as if he was never dismissed, or his services have never been terminated.”*

This decision was not in anyway challenged by the respondents. For it is well settled in our law that until a decision is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked.[16] The respondents were reckless in and contemptuous by paying no heed to that decision. The respondents showed no intention of wanting to comply with the ruling aforesaid. They treated it with disdain.

[63] There is a higher duty on the state organ to respect the law and to tread respectfully when dealing with rights.[17] Respondents’ conduct is an antithesis to this high duty.

- [64] Where the legality of their actions is at stake, it is crucial for public servants to neither be coy nor to play fast and loose with the truth. On the contrary, it is their duty to take the court into their confidence and fully explain the facts so that an informed decision can be taken. Our present Constitutional order imposes a duty upon state officials not to frustrate the enforcement by courts of the legal rights.[18] I have no doubt in my mind that the respondents frustrated the enforcement of applicant's contractual rights.
- [65] The second respondent frustrated the applicant by not availing himself to the applicant and his legal representatives for resolution of this matter. A subsequent alleged letter allegedly instructing the applicant to wait for 10 days without going to work is unclear as to the purpose for which the applicant would wait. Respondents' opposing papers are devoid of any explanation as to their failure to assist the applicant, especially in the light of a ruling of the Bargaining council. It is therefore easy for me to come to a conclusion that the respondents have dismally failed to take this court into their confidence.

#### Order

[66] In the result I make the following order:

66.1 The applicant is hereby granted leave to bring this application by way of urgency in accordance with the provisions of Rule 6(12) of the Uniform Rules.

66.2 The respondents are ordered to forthwith pay applicant's salary and associated emoluments for the Month of July 2024 into the applicant's bank account, details of which are the following:

Account Holder : Phendule Mbewu Bank : First National Bank Account Number : 6[...] Branch : Mthatha Branch Code : 250655 Account Type : Cheque

65.3 The respondents are ordered to forthwith remove the key block fitted in applicant's office door, to wit, Office No. F-02, First Floor Prosperity Building and allow the applicant access into the aforesaid office in every manner possible.

65.4 The respondents are hereby interdicted from further unlawfully withholding applicant's salary and associated emoluments.

65.5 The respondents are hereby interdicted from further placing a key block to the applicant's office door without prior consultation with applicant.

65.6 The first respondent is hereby ordered to pay costs of this application on a scale as between an attorney and client.

Acting Judge of the High Court

APPEARANCES: For the applicant : Adv SST. MAPEKULA Instructed by : M NZIMA ATTORNEYS  
No 47 Cumberland Road Mthatha Cell No: 072 130 4772 TEL: 047 1109 120 E-mail :  
brnzima@gmail.com Ref : Mr Nzima For the Respondents : Adv DV KROON SC with Adv METU  
Instructed by : NOSINDWA ATTORNEYS 23 Delville Road Mthatha Tel: 047 531 4429

- [1] The disciplinary enquiry of the applicant that was arranged and set down on the 14th and 15th of December 2021 was null and void. This means that the status of the applicant is as if he was never dismissed or his services have never been terminated.
- [2] Director of Hospital Services v Mistry 1979 (1) SA 625 (A) at 635 H-636A; Nkume v Transunion Credit Bureau and another 2014 (1) SA 134 (ECM) Para 7
- [3] Estate Agents Board v Lek 1979 (3) SA 1049 at 1063F
- [4] Gcaba v Minister for Safety and Security and others 2010 (12) SA 238 (CC) Para 75
- [5] Director of Hospital Services v Mistry 1979 (1) SA 626 A at 628H-636A
- [6] Titty's Bar and Bottle Store (Pty) v ABC Garage (Pty) Ltd 1974 (4) SA 362 (T) at 639
- [7] Zokufa v Compuscan (Credit Bureau) 2011 (1) SA 272 (ECM) Para 33-34
- [8] Section 77(3) of Basic Conditions of Employment Act 75 of 1997
- [9] Makhanya v University of Zululand 2010 (1) 62 SCA Para 59 and 79 and many other paragraphs in the

## Judgment

- [10] Section 157(2) (a) of Labour Relations Act 66 of 1995
- [11] Makhanya v University of Zululand 2010 (1) SA 62 SCA Para 18 and 24
- [12] Masemola v Special Pension Appeal Board and another 2020 (2) SA (1) (CC) Para 51
- [13] Minister of Interior v Harris 1952 (4) SA 769 A at 780H-781B
- [14] Ashby v White [1790] ENGR 55; [1703] 92 ER 126 at 136
- [15] Setlogelo v Setlogelo 1914 AD 221 at 227
- [16] Oudekraal Estates (Pty)Ltd v City of Cape Town and Others 2004
- (6) SA 222 Para 26; South African Broadcasting Corporation SOC Ltd and Another v Democratic Alliance and Others 2016 (2) SA 522 (SCA) Para 45
- [17] MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd 2014 (3) SA 481 (CC) Para 82; Magqazana v Buffalo City Metropolitan, Municipality and another (RC 1386/2023) [2024] ZAECLLC 7 (5 March 2024) Para 44
- [18] Kalil NO and others Mangaung Metropolitan Municipality and others 2014 (5) SA 123 (SCA), 2014 (3) ALL SA 291 SCA Para 30

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