

SOUTH AFRICA / JUDGMENT

Mduli v Mzila Security Services and Another (J898-21) [2022] ZALCJHB 19 (23 February 2022) [2022] ZALCJHB 19

COURT

Labour Court Johannesburg

BEFORE

T Deane

CASE / FILE NUMBER

J898-21

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J898-21

In the matter between:

SIFISO
MDULI
Applicant
and
MZILA SECURITY
SERVICES
First Respondent
LINDIWE
BUTHELEZI
Second Respondent

Heard:

11 February 2022
Delivered: 23 February 2022
Summary: Contempt – a
deliberate disregard is not enough – non-compliance of
applicant – absence of mala fides or
wilfulness

JUDGMENT

DEANE, AJ

Introduction

[1] This is a contempt of court application to place the First and Second Respondents (collectively the Respondents) in contempt for its failure to comply with a settlement agreement (Settlement Agreement) under case number MPEM5821-2019, dated 3 August 2020.

[2] In light of the Respondents' admission that the order was not complied with, the only issue for determination by this Court is whether such non-compliance was mala fide and wilful.

Background

[3] The Applicant was employed by the First Respondent, Mzila Security Services (Mzila), as a Point Duty Officer on a contractual basis.[1] The Applicant was appointed in terms of a fixed term contract from 3 December 2018 to 29 March 2019.

[4] Mzila has been operating in the private security industry since 2000 with specialisation in general security practices.

[5] In accordance with the terms and conditions of the contract, on 13 February 2019 a notice of termination of appointment upon expiry of the contract was served by Mzila on the Applicant. This was about six weeks before the Applicant's contract was to expire on 29 March 2019.[2]

[6] The contract came to an end but even though the contract had come to a natural end through the effluxion of time, Mzila entered into a Settlement Agreement with the Applicant on 3 August 2020.

[7] In terms of the Settlement Agreement, Mzila agreed specifically to, re-employment, not reinstatement of the Applicant on 3 August 2020. This is apparent from paragraphs 2 and 7 of the Settlement Agreement.

[8] Reinstatement was impossible because Mzila was in no position to re-instate the Applicant to the position of Point Duty Officer due to the contract under which Mzila needed Point Duty Officers with SASOL having prematurely ended.[3]

[9] Mzila agreed to re-employ the Applicant but to a different position with effect from 4 August 2020. To enable Mzila to re-employ the Applicant, it was a condition of the Settlement Agreement that the Applicant would be employed as a Security Officer.

[10] For the Applicant to qualify as a Security Officer and therefore be re-employed by Mzila, the Applicant had to first undergo a two-week training by obtaining a Private Security Industry Regulatory Authority (PSIRA) certificate at the end of the training.

[11] The Settlement Agreement further states that the Applicant will be paid the minimum wage by Mzila

during the training period. The agreement made it clear that the Applicant had to qualify with a PSIRA Grade C certificate in order to be re-employed.

[12] The Applicant failed to participate in the training and consequently does not have a PSIRA Grade C certificate.

[13] Mzila's defence to the contempt application is that Mzila's non-compliance with the court order was due to the Applicants non-compliance with the terms of the Settlement Agreement.

Legal Principles

[14] The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. [4] In *Fakie v CCII Systems (Pty) Ltd* [5] (*Fakie*), the Court stated that for contempt to be proven, a deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him- or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. [6] Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith). [7]

[15] These requirements, that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt, in accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the Court's dignity, repute or authority that this evinces. [8] Honest belief that non-compliance is justified or proper is incompatible with that intent.

[16] In the most recent authoritative judicial exposition on the law of contempt, the Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Ltd and others; Mkhonto and others v Compensation Solutions (Pty) Ltd* [9] (*Matjhabeng*) reiterated the basic test for contempt set out in *Fakie*, viz:

'It should be noted that developing the common law thus does not require the prosecution to lead evidence as to the accused's state of mind or motive: Once the three requisites... have been proved, in the absence of evidence raising a reasonable doubt as to whether the accused acted wilfully and mala fide, all the requisites of the offence will have been established. What is changed is that the accused no longer bears a legal burden to disprove wilfulness and mala fides on a balance of probabilities, but to avoid conviction need only lead evidence that establishes a

reasonable doubt’.

[17] The Constitutional Court also noted the constitutional objective underlying contempt proceedings as being the preservation of the Court’s authority by ensuring that its orders are complied with:

‘[48] To ensure that courts’ authority is effective, section 165(5) [of the Constitution]

makes orders of court binding on “all persons to whom and organs of state to which it applies”.

The purpose of a finding

of contempt is to protect the fount of justice by preventing unlawful disdain for judicial authority.

Discernibly, continual non-compliance

with court orders imperils judicial authority’.[10]

[18] It is on this basis that I proceed with the merits of the application below.

Analysis

[19] In this case it is clear that Mzila admits that there was a court order and that there was non-compliance. Mzila however disagrees that it was mala fide. For the reasons mentioned above the position of Point Duty Officer was no longer available. The Settlement Agreement specifically makes reference to re-employment and re-employment to a different position. In order for the Applicant to be re-employed he had to undergo training to achieve a Grade C certificate. Failure to achieve such certification as required would mean that the Applicant could not be re-employed as per the terms of the Settlement Agreement.

[20] Indeed, Mzila offered to assist the Applicant to qualify for the PSIRA Grade C certificate while earning his previous salary. However, the Applicant refused this assistance.

[21] Mzila does not only provide security services but it also provides security training. At the time that the Settlement Agreement was signed, Mzila was running a security training and the Applicant was requested to be a part of this training, after which he would qualify as a certified security personnel.

[22] It is clear that the Applicant refused to be a part of this training and consequently Mzila could not adhere to the Settlement Agreement.

[23] As is clear from paragraph 7 of the Settlement Agreement, the Applicant was specifically “required

to first undergo a two-weeks training” before Mzila’s duty in terms of the Settlement Agreement arose, which was to employ the Applicant as a security guard.

[24] But for the Applicant’s failure to comply, Mzila would have complied with the Settlement Agreement that they undertook. In the circumstances, it can hardly be said that the Respondents’ non-compliance is mala fide or wilful.

[25] Applying the legal principles to the facts of this case, this Court concludes that no case of contempt has been made out by the Applicant.

Costs

[26] This then only leaves the issue of costs. I find that in this case that there is no reason in law or fairness to award costs.

[27] In the premise the following order is made:

Order

1. The First and Second Respondents are found not to be in contempt.
2. There is no order as to costs.

T. Deane

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adv. SL Khumala

Instructed by: Victor

Mathye & Chauke Incorp.

For the Respondents: SD Mbeki

[1] See: Annexure LB1.

[2] See: Annexure LB2.

[3] Annexure LB3.

[4] See: Frankel Max Pollak Vinderine Inc v Menell Jack Hyman Rosenberg and Co Inc and others [1996] ZASCA 21; 1996 (3) SA 355 (A) at 367H-I and Jayiya v Member of the Executive Council for Welfare, Eastern Cape 2004 (2) SA 611 (SCA) at paras 18 and 19.

[5]

[2006] SCA 54 at para 42c.

[6] See: Consolidated Fish (Pty) Ltd v Zive 1968 (2) SA 517 (C) at 524D as applied in Noel Lancaster Sands (Edms) Bpk v Theron en andere 1974 (3) SA 688 (T) at 691C.

[7] Noel Lancaster Sands (Edms) Bpk v Theron 1974 (3) SA 688 (T) at 692E-G per Botha J, rejecting the contrary view on this point expressed in Consolidated Fish v Zive (above). This court referred to Botha J's approach with seeming approval in Frankel Max Pollak Vinderine Inc v Menell Jack Hyman Rosenberg & Co Inc [1996] ZASCA 21; 1996 (3) SA 355 (A) 368C-D.

[8] See: formulation in *S v Beyers* 1968 (3) SA 70 (A) at 76E and 76F-G.

[9] 2018 (1) SA 1 (CC) at para 62 and *Fakie* at para 23.

[10] *Matjhabeng* at para 48.

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Prepared on 11 October 2026 · Esheria