

SOUTH AFRICA / JUDGMENT

Mnisi v Safety and Security Sectoral Bargaining Council and Others (J 377/21)

[2021] ZALCJHB 466 (27 May 2021)

[2021] ZALCJHB 466**COURT**

Labour Court Johannesburg

BEFORE

S Mabaso

CASE / FILE NUMBER

J 377/21

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Source record**IN****THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not****Reportable****Case****No: J 377/21****In****the matter between:**

DOMINIC
MANDLA
MNISI
Applicant
and
SAFETY
AND SECURITY SECTORAL BARGAINING
COUNCIL
First Respondent
WILFRED
NOKO NKOENG N.O
Second Respondent
THE
MINISTER, DEPARTMENT OF POLICE
Third Respondent

Heard:

29 April 2021 and further written submissions filed at a later date.

Delivered:	This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 27 May 2021.
Summary:	Non-Joinder and Costs

JUDGMENT

MABASO, AJ

Introduction

[1] The issues herein are about the non-joinder of the South African Police Services (SAPS)[1] and costs. The Applicant had sought specific orders, including costs, against both the First Respondent, Safety and Security Sectoral

Bargaining Council (the Bargaining Council) and Second Respondent, Wilfred Noko Nkoeng N.O (the Arbitrator), because of the delay in issuing an arbitration award involving him and the SAPS. The Applicant had launched an

application to compel the First and Second Respondents to deliver the arbitration award as required by the provisions of the LRA. On the eve of the hearing, the Applicant withdrew this application, as the arbitration award was subsequently served. However, he persisted on costs order against the First Respondent.

Background

and Analysis

[2] Any party that has a direct and substantial interest in a particular matter should be joined into such proceedings, viz. if such party stands to be prejudiced by an order that the Court might make. This question has to be determined on a "case and context basis". The SAPS is a party in the dismissal dispute wherein this application

emanates from.

[3] In *Minerals Council South Africa v Minister of Mineral Resources and another* [2020] 4 All SA 150 (GP), the joinder principle is encapsulated thus:

"The question whether the potentially affected interest is a direct and substantial one that constitutes a legal interest, needs to be determined on a case and context specific basis. Particular regard would have to be paid to the special characteristics of the case as well as to the impact the relief sought by an applicant would have on the nonjoined affected parties. It is therefore important to discern the context within which this litigation is conducted."(Own emphasis)

- [4] No judgment is issued relating to the non-joinder of the SAPS, because the Applicant has withdrawn the application and only pursuing costs order against the First and Second Respondents; this judgment only deals with this issue.
- [5] Generally, costs in this Court do not follow the result, so if costs are ordered, this Court will then have to give reasons. Section 162 of the LRA provides that this Court may make an order for payment of costs according to law and fairness, cf. *Ethekwini Municipality v Hadebe and others* [2016] 8 BLLR 745 (LAC). Based on the facts of this case, I conclude that costs have to be awarded against the First Respondent, and I give

reasons

hereinafter which requires that I deal with part of the merits of this matter.

- [6] The Applicant worked for the SAPS until dismissed in March 2020. Following his dismissal, he referred an unfair dismissal dispute to the First Respondent. The arbitration hearing was held on 15 February
2021. Consequently, the arbitration award was due to be issued and served on or before 03 March 2021, but despite being issued on time it was not served on the Applicant. Section 138(7) directs that a Presiding Commissioner has to issue an award containing brief reasons then served by the Bargaining Council within 14 days of the conclusion of the arbitration hearing.
- [7] The Bargaining Council, in opposing this Application, inter alia, avers thus, “[t]he arbitration award was forwarded to [it] on the 24th February 2021” by the Second Respondent. However, on 03 March 2021, Mr Mashiane sent the arbitration award to Ms Romilla Nunhoo (Ms Nunhoo), the Dispute Resolution Compliance Officer. The latter sent it to Vetting Panellist (the Second Commissioner) for “perusal”. After the Second Commissioner had looked at the arbitration award, it was returned to the Second Respondent “with comments and changes to be made on the award by the Second Respondent”.
- [8] Considering the answering affidavit, it seems the Second Commissioner had to be involved following the arbitration award being issued by the Second Respondent. For purposes of the issue at hand, I deem it irrelevant to make further comments about the involvement of the Second Commissioner thereafter, save to indicate that the involvement of the Second Commissioner who had to peruse and make comments on the arbitration award, already prepared by the Second Respondent,

resulted to the delay which necessitated the Applicant to bring this Application.

- [9] Between 11 March 2021 and 8 April 2021, the Second Respondent was being reminded by Ms Nunhoo to attend to the changes, despite the Second Respondent having issued the arbitration award on 24 February 2021, he was now expected to issue a “corrected arbitration award”. [2] Nevertheless, the Second Respondent’s arbitration award was served on the Applicant after the latter had launched this Application.
- [10] Had the Bargaining Council served the arbitration award immediately after being sent to it by the Second Respondent, as indicated above, the Applicant would not have launched this application. However, because the Bargaining Council wanted “the corrected arbitration award” to be produced by the Second Respondent, such delay resulted in the Applicant approaching this Court, after he unsuccessfully engaged the First Respondent. Only after this application being delivered that the Bargaining Council served the Second Respondent’s arbitration award, that it had been in its possession since 24 February 2021. No reasons were provided as to what was wrong with the Second Respondent’s arbitration award. Furthermore, the Second Respondent’s conduct in opposing the application, instead of simply serving the arbitration award, justifies costs order against it. [3]
- [11] In the circumstances, I conclude that the First Respondent is to pay the costs, as there is no plausible reason for the delay in serving the arbitration award.
- [12] Therefore, the following order is made:

Order:

1. The First Respondent is ordered to pay the Applicant’s costs, on a party and party scale, excluding costs of appearance on 29 April 2021.

S Mabaso

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr Mashigo

Instructed by:

Dimo Mashigo Attorneys

For the First and Second Respondents:

Mr D Mashiane

- [1] Raised by the Court.
- [2] Answering affidavit, para 8.
- [3] See 162(2)(b) of the LRA.

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Prepared on 14 October 2026 · Esheria