

SOUTH AFRICA / JUDGMENT

Murwa v National Treasury and Another (J1463/23) [2024] ZALCJHB 347 (12 August 2024)

[2024] ZALCJHB 347

COURT

Labour Court Johannesburg

BEFORE

Tlhotlholemaje

CASE / FILE NUMBER

J1463/23

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: J 1463/23

In

the matter between:

MAKOLOMETJE
TIMOTHY MURWA
Applicant
and
NATIONAL
TREASURY
First
Respondent
DUNCAN
PIETERSE N.O
Second
Respondent

Heard:

22 May 2024

Delivered:

This judgment was handed down electronically by circulation to the parties' legal representatives by email, and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 12 August 2024

JUDGMENT

TLHOTLHALEMAJE, J

- [1] The applicant seeks to hold the respondents in contempt of court for their alleged non-compliance with an arbitration award issued under the auspices of the General Public Service Sectoral Bargaining Council (GPSSBC) dated 17 January 2023.
- [2] The applicant is appointed by the first respondent (National Treasury) in the position of Director: Public Works. He was placed on precautionary suspension between June and December 2021 on account of allegations of misconduct. Having referred a dispute to the GPSSBC, his precautionary suspension was uplifted in terms of an arbitration award issued on 24 November 2021.
- [3] The applicant contends that after his suspension was uplifted, his subordinates and line manager 'sidelined' him, and his subordinates have refused to obey his instructions. Complaints to the Human Resources Manager did not bear any fruit. This went to the extent of his line manager instructing him not to take disciplinary action against his subordinates, and further instructing his subordinates to cease reporting to him directly.
- [4] The applicant then referred another dispute to the GPSSBC under the provisions of section 186(2)(a) of the Labour Relations Act[1] (LRA). An award was issued on 17 January 2023, in which it was found that National Treasury had committed an unfair labour

practice, and was ordered to reinstate the applicant's powers, duties and responsibilities in his position as Director. The

arbitrator further ordered National Treasury to alter the current reporting patterns and cause to cease the applicant's subordinates from reporting directly to the Chief Director, and to report to the applicant as per the reporting structures. In addition,

National Treasury was ordered to pay to the applicant, compensation equivalent to three months' salary by no later than 14 February 2023.

- [5] It is not in dispute that National Treasury paid the compensation amount to the applicant as per the award. He however contends that the other orders were not complied with, specifically related to the reinstatement of his responsibilities in his position as Director, and reporting lines of his subordinates.
- [6] He contends that a meeting held on 6 March 2023 was held for the purposes of aligning the organisational structure that required two deputy directors to report to him in accordance with the award. The two subordinates were aggrieved by the outcome of that meeting and had lodged a grievance against him for victimising, bullying and intimidating them. Following the grievance hearing and a report, the outcome of a grievance hearing was issued on 4 August 2023 by the Acting Director-General. In accordance with that outcome, he was instructed to desist from such conduct against his subordinates. The subordinates were

further advised to look into prospects of a transfer within the department.

- [7] Based on these factors, the applicant contends that the respondents have failed to comply with the arbitration award in that his subordinates continue to undermine his authority, frequently insult him and ignore his lawful instructions. He contends that National Treasury has resisted his attempts to discipline his subordinates, and that he has since certified the arbitration award in terms of section 143(3) of the LRA to ensure its enforcement.
- [8] At the hearing of this application, Counsel for the applicant submitted that the basis of the respondents' alleged contempt is the outcome of the grievance hearing in a letter[2] dated 4 August 2023 penned by the Acting Director-General. The letter reads as follows;

'OUTCOME OF AN INVESTIGATION FOR GRIEVANCE LODGED BY YOUR SUBORDINATES (MS P MASISO & MS M MOKOKA)'

It has come to my attention that a grievance has been lodged against you by your two subordinates (Ms M Mokoka and Ms P Masiso) relating to victimisation, bullying and intimidation.

The grievance was investigated and finalised accordingly, and it is found to be substantiated. Based on the outcome, you are hereby instructed to cease victimising, bullying and intimidating these officials.

The investigation also affirmed that the employees should look into prospects of a transfer within the department and that an investigation commence against yourself into elements of misconduct regarding your conduct'

- [9] In his answering affidavit, the second respondent, who is the current Director- General of the National Treasury, averred that the above outcome came about after the two officials had complained that the applicant was rude, abusive and had victimised them. The grievances were properly investigated by another official from the Department of Tourism resulting with a grievance hearing and a report and its outcome as outlined above. The applicant's conduct was found to be negative, counter-productive and had undermined the good order in the Chief-Directorate. The applicant's conduct was also found to be hostile and offensive to the two officials, inducing a fear of harm and was demeaning and humiliating, creating a hostile working environment. It was recommended that the National Treasury should consider taking disciplinary action against him and that consideration be given to transferring the two officials to other available posts or for the existing reporting lines to be changed.

[10] The second respondent averred that the outcome of the grievance issued to the applicant was unrelated to the award which the respondents did not at all ignore. He averred that the meeting of 6 March 2023 was meant to implement the award, and the outcome did not impact on the award nor disturb the formal reporting lines between the applicant and his subordinates as they continue to report to him, and that he had continued to issue them with instructions and instituted discipline against them.

[11] The principles applicable in contempt proceedings were restated in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*[3] as follows;

“As set out by the Supreme Court of Appeal in Fakie, and approved by this Court in Pheko II, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed, and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge

this burden, contempt will have been established.” (Citations omitted)[4].

[12] The only issue in this case is whether under the third requirement, the respondents have not complied with certain parts of the award in the light of the common cause fact that the applicant was paid the compensation amount.

[13] The applicant’s contentions that the respondents were in contempt on the basis that his reporting lines and responsibilities were not restored based on the outcome of the grievance hearing and report are indeed extraordinary. The first point to be made is that in instances where employees lodge grievances related to their harassment at the workplace, an employer is obliged under the provisions of the Employment Equity Act[5] read with the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace[6], to investigate such grievances and act accordingly. This is so in that harassment of an employee is a form of unfair discrimination,

which is prohibited on any one or combination of the grounds of unfair discrimination listed in section 6 of the EEA, including on any arbitrary ground. Thus the failure by an employer to act in such instances makes it susceptible to be liable under section 60 of the EEA for acts committed by its employees.

[14] In this case, the grievances of harassment and bullying were laid against the applicant and the National Treasury had acted accordingly. If an employer rebukes an employee and requests him to desist from unbecoming conduct towards other employees, inclusive of recommending that the ‘victims’ of harassment be removed from that employee’s sphere of authority in the light of a hostile working environment, that employer’s response cannot be faulted. It is not for this Court or any forum under such circumstances, to dictate to the employer as to how it must manage conflict within its reporting structures, or interfere in

how the employer must manage or structure its reporting lines in order to address any conflict in the workplace. To hold otherwise would be to intrude on management's prerogative to run its internal affairs in accordance with its operational requirements.

- [15] Under the rubric of 'Contempt' in the founding affidavit, and to the extent that the only issue raised is that the respondents have refused to comply with the award, it is not said how this is the case. The applicant refers to a refusal to reinstate him, which is patently disingenuous as he is back in his position after the referral to the GPSSBC. If by 'reinstatement' he may have referred to his responsibilities and reporting lines of his subordinates, then in the light of what has already been stated, this is equally not the case. He further alleged that since the second respondent was not yet appointed at the time of all these disputes, his (second respondent's) averments in the answering affidavit were not within his personal knowledge. Even if this might be the case, the applicant's case falters even on his own version and the annexures he relied on.
- [16] To the extent that the applicant sought to rely on the letter of 9 May 2023[7] issued by the Deputy Director-General (DDG) to him instructing him to retract his intention to issue a final written warning against the two officials for alleged gross insubordination, the basis of that request according to the DDG was that the two officials had acted on his instructions that they should report to the Chief Director: Public Finance. Clearly there was justification without regard to the full merits of the issue, for the request to retract the intention to issue the final written warnings to the officials. There is no gainsaying that the DDG being the overall manager of the Division was entitled to do so and in order to prevent an unfairness to the two officials, who were merely following the instructions of the applicant's superior. This request by the DDG cannot by any stretch of imagination, be viewed as being in contempt of the award or undermining the authority of the applicant.
- [17] Other than the above incident, the founding affidavit does not indicate in what other manner the respondents have acted contrary or not in compliance with the award. The applicant's complaints that his subordinates undermined his authority or frequently insulted him or ignored his lawful instructions are red herrings on the grounds of being unsubstantiated. In any event, these allegations cannot be a basis for a contempt finding against the respondents.
- [18] In the end, there can be no basis for any finding to be made based on a pure reading of the letter of the then Acting Director-General and other annexures relied upon by the applicant, that the respondents have not complied with the arbitration award. There is nothing contemptuous about an employer's conduct in investigating grievances against an employee and taking the necessary steps as required, to address and remedy those grievances. It could not have been expected of the respondents to simply ignore the two officials' complaints and for them to endure harassment at the hands of the applicant simply because there is an arbitration award that orders that these officials must continue to report to him as if nothing had happened. In any event, the respondents' case was that other than the letter of the DDG of 9 May 2023, these officials continue to report to the applicant, and the latter continues to

exercise powers of supervision and discipline over his subordinates.

[19] The second respondent is correct in his assessment that the applicant ought to have taken a step back and reflected on his conduct in the light of the report on the grievances laid against him and its outcome. He has not done so but had instead referred two other disputes to the GPSSBC emanating from that letter, in which he inter alia alleged that the instruction for him to stop bullying and victimising his subordinates amounts to demotion.

[20] Inasmuch as the applicant's rights to access to courts or any other forum to have any dispute resolved are guaranteed under section 34 of the Constitution,[8] it is my view however that this application constitutes an abuse of court process. This is so in that the pleadings do not even come close to disclosing the basis of contempt in relation to the arbitration award, let alone any conduct on the part of the first and second respondents that can be deemed to be wilful or mala fide. It is against these observations that the requirements of law and fairness dictate that the applicant's application be dismissed with costs.

[21] Accordingly, the following order is made;

Order:

1. The Rule Nisi issued on 16 November 2023 is discharged.
2. The applicants' application to find the first and second respondents to be in contempt of the arbitration award issued under Case No: GPBC787/2022, which award was subsequently certified under section 143(3) of the Labour Relations Act, is dismissed with costs.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. P Dhlamini, instructed by Ndziane Attorneys.

For the 1st – 2nd Respondents: Adv. K Millard, instructed by State Attorney: Pretoria.

[1] Act 66 of 1995, as amended.

[2] Annexure 'MTN9' to the Founding Affidavit.

[3]

[2021] ZACC 18; 2021 (9) BCLR 992 (CC); See also *Matjhabeng Local Municipality v Eskom Holdings Limited and Others*; *Mkhonto and Others v Compensation Solutions (Pty) Limited*

[2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC). 2017

- (11) BCLR 1408 (CC) at para 74 where the Constitutional Court confirmed the requisites for contempt of court as follows: ‘I now determine whether the following requisites of contempt of court were established in Matjhabeng: (a) the existence of the order; (b) the order must be duly served on, or brought to the notice of, the alleged contemnor; (c) there must be non-compliance with the order; and (d) the non-compliance must be wilful and mala fide. It needs to be stressed at the outset that, because the relief sought was committal, the criminal standard of proof – beyond reasonable doubt – was applicable.’

[3]

[2021] ZACC 18; 2021 (9) BCLR 992 (CC); See also *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited*

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[4] At para 37.

[5] Act 55 of 1998.

[6] NO: 46056 GG 18 March 2022.

[7] Annexure ‘MTM3’ to the founding affidavit

[8] The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

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