

SOUTH AFRICA / JUDGMENT

Mvulo and Others v Amathole District Municipality and Another (P16/22) [2022] ZALCPE 12 (17 June 2022)

[2022] ZALCPE 12

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P16/22

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN
THE LABOUR
COURT
OF
SOUTH AFRICA,
GQEBERHA
Not
Reportable
Case
NO: P16/22
In
the
matter

between:

BONGANIMVULO
APPLICANTS
LISTED
IN
ANNEXURE
"A"
TO
First
Applicant
NOTICE
OF
MOTION
Second to twelfth Applicants
and

AMATHOLE
DISTRJCT MUNICIPALITY
First Respondent
THENDEKILE
MNYIMBA
Second
Respondent

Heard: 3 June 2022

Delivered: This judgment
was
handed down
electronically
by circulation
to the Appl
icants'
and
Respondents;
Legal
Representatives
by email,
publication
on the
Labour Court
website and
release to
SAFLll. The date
and time for
handing
- down
is
deemed to be 14h30 on 17 June
2022.

JUDGMENT

LALLIE J

- [1] In this urgent application the applicants seek an order finding the respondents guilty of contempt of court for their non-compliance with an order granted by this court on 24 November 2020. The application is opposed by the respondents.
- [2] The applicants are employees of the first respondent municipality. A number of the first respondent's employees receive a travel allowance. The applicants receive their car allowances through one of the first respondent's policies known as the subsidised Motor Vehicle Scheme for Essential Users which will be referred to as the scheme in this

judgment.

On 3 November 2020, the first respondent informed its employees of its intention to stop paying the travel allowance. In an effort to retain the allowance the affected employees including the applicants approached this court for relief. Consequently an order was granted in their favour on 24 November 2020. The salient terms of the order are the following :

'3. The Respondent is ordered to comply with its contractual obligation to pay the Applicants their travel allowances due to them.

4. The Respondent is interdicted and restrained from discontinuing or terminating the travel allowances.'

[3] On 18 October 2021 the first respondent gave the applicants written notice of its intention to terminate the travel allowance with effect from 25 December 2021. After an exchange of correspondence between the applicants' and the first respondent's attorneys the first respondent stopped paying the travel allowance from 15 January 2022. The applicants submitted that the first respondent's conduct constituted contempt of court. They further submitted that the second respondent has made himself guilty of the same offence because as the accounting officer of the first, he was charged with the responsibility of ensuring that the order was complied with.

[4] For this application to succeed the applicants must prove the existence of a court order, service of the order on the respondents and non-compliance with the order. When those elements have been proved, the respondents have to discharge the evidentiary burden of proving that the non-compliance was not wilful and mala fide[1]

[5] It is common cause that the order of 24 November 2020 exists, it was served on the respondents who withheld the applicants' travel allowances from 15 January

2022. The respondents submitted that they complied with the order. They sought to rely on a moratorium for all its officials on the purchasing of new vehicles from

2018. As the moratorium pre-dates the court order which is the subject of this application, it cannot assist the respondents in justifying non-compliance with the order. The applicants submitted that the argument should not succeed as it was raised, considered and rejected when the application which culminated in the order of 24 November 2020 served before court. Had any errors been made when the order was granted, the respondents had a right to appeal against it. They may therefore not use this application to achieve what they could have had they exercised their right to appeal.

[6] The respondents raised financial difficulties which resulted in it being subject to a financial recovery plan in terms of the Finance Management Act and section 139 (5) (a) of the Constitution. The respondents did not demonstrate how the above pieces of legislation entitled them not to comply with the order of 24 November 2020.

(7) A further defence the respondents sought to rely on was that in June 2021 the first respondent held a consultation with its Local Labour Forum (the LLF) regarding the subsidised motor vehicle schemes for essential users. Subsequent to the consultation a new subsidised motor vehicle scheme for essential users was adopted and approved by the first respondent's council. The respondents expressed the view that after the above steps had been taken the respondents were of the bona fide belief that they could implement the new scheme. It was argued on behalf of the applicants' that absent an agreement between the parties, the first respondent could not withhold their vehicle allowance. I accept this argument because the order of 24 November 2020 confirms the applicants' contractual entitlement to the vehicle allowance. The first respondent had no legal basis for unilaterally denying the applicants of their right to the allowance. Had the consultation resulted in an agreement the first respondent's argument would have been valid as the agreement would have constituted a waiver of the right confirmed in the order. I accept the respondents' argument that the applicants were represented by their trade union at the consultation. However, the consultation on its own did not grant the first respondent the power to withhold the applicants' travel allowances. In the order the allowance is referred to as a contractual right. It is therefore a contractual term which could be changed by agreement between the parties.

- [8] The first respondent has powers to take resolutions which regulate the terms and conditions of its employees. It, however, lacks the powers to take a resolution not to comply with a court order. Court orders remain valid until set aside by courts of competent jurisdiction. The First respondent lacks the authority to resolve not to comply with a court order. The respondents' belief that the consultation and resolution justified their non-compliance with the order cannot, in the circumstances, be bona fide.
- [9] The respondents submitted that the applicants cannot be allowed to approbate and reprobate in that they are party to an unfair labour practice dispute that is pending before the bargaining council which is based on the same facts they are relying on in this application. They therefore, so goes the argument, must stand and fall by their decision to refer their dispute to the bargaining council. I accept the applicants' argument that the pending dispute does not preclude them from bringing this application which is based on a contractual claim. I wish to add that an application for contempt of court is not limited to the enforcement of court

orders.

It also serves to address the deliberate and intentional violation of the court's dignity and authority[2]. There are therefore no legal impediments to the filing of this application.

- [10] The respondents did not discharge the evidentiary burden of proving that their non-compliance with the order of 24 November 2022 was not wilful and mala fide. The respondents are therefore guilty of contempt of court.

[11] The applicants sought a costs order for de bonis propriis against the second respondent including the costs of two counsel. It was argued that the costs order was unjustified as this matter is not complex. I have considered the arguments on costs, provisions of section 162 of the Labour Relations Act[3] and its interpretation by the Constitutional Court. The law justifies a costs order in favour of the applicants as the successful party. Fairness also justifies the order because the applicants should not be out of pocket as a result of the respondents' non-compliance with a court order. A consideration of the steps taken by the first respondent in an effort to act lawfully points to the

conclusion

that a costs order de bonis propriis against the second respondent would be unfair. The applicants did not justify the use of 2 counsel.

[12] In the premises, the following order is made:

Order:

1. The first and second respondent are guilty of contempt of court.
2. The second respondent is sentenced to three months imprisonment, wholly suspended for a period of 12 months on condition that the respondents, within 30 days of this order, comply with paragraph 3 and 4 of the order dated 24 November 2020.
3. The first respondent is ordered to pay the applicants' costs on the applicant and client scale

Z. Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Rorke SC with Advocate Grobler SC

Instructed by

Wesley Pretorius and Associates Inc.

For the Respondents: Mr Van Rensburg of Wikus Van Rensburg Attorneys

[1] Cathay Pacific Airways Ltd and Another v HL and Another [2017] 2 All SA 722 (SCA).

[2] Fakie NO v CCIISystems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA) at 333 and 334.

[3] Act 66 of 1996, as amended.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCPE/2022/12.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mvulo-and-others-v-amathole-unknown-topic-alcpe-2022>

Prepared on 12 October 2026 · Esheria