

SOUTH AFRICA / JUDGMENT

Mvulo v Amathole District Municipality (P16/22) [2022] ZALCPE 34 (7 November 2022) [2022] ZALCPE 34

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P16/22

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IN THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

Case no:P16/22

In the matter between

BONGANI MVULO

First Applicant

APPLICANTS LISTED IN ANNEXURE "A" TO THE

NOTICE OF MOTION

Second To Twelfth

Applicants

And

AMATHOLE DISTRICT MUNICIPALITY

First Respondent

THANDEKILE MNYIMBA Second Respondent

Delivered: This judgment was handed down electronically by circulation to the Applicants' and the Respondents' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 12h00 on 07 November 2022.

JUDGMENT:**LEAVE TO APPEAL**

LALLIE, J

- [1] This is an application for leave to appeal against the whole of the judgment handed on 17 June 2022, in which the respondents were found guilty of contempt of court and compelled to comply with paragraphs 3 and 4 a order issued by this court on 24 November 2020. A punitive costs order was granted against the first respondent. The application is opposed by the applicants.
- [2] The respondents' application is based on a number of grounds in which they submitted that in reaching the decision they seek leave to appeal against, I made a number of errors including the finding that they failed to comply with the order of 24 November 2020. The respondents alleged that I further erred in finding that I further their conduct was wilful and mala fide in law, compelling them to comply with the order of 24 June 2020 and granting a punitive costs order against the first respondents.
- [3] Most of the issues the respondents raised have been dealt with fully in the judgment they seek leave to appeal against. I stand by the findings made in the judgment. In denying having failed to comply with the order of 24 June 2020, the respondents attempted to justify their non-compliance. It was argued on their behalf that the travel allowances were not due to the applicants. The respondents relied on the first respondents' poor financial state and its right to change its travel allowance scheme.
- [4] In preferring the applicants' version that the respondents failed to comply with the order of 24 November 2020, I accepted that the judgment confirming the applicants' contractual right to the travel allowances was not challenged. It therefore stands. The arguments advanced on behalf of the respondents did not refute the correctness of the legal position that an employer may not unilaterally change employees' terms and conditions of employment.

The justification the respondents sought to rely on did not relieve them of the obligation to comply with the order. They therefore failed to comply with the order.

- [5] The respondents denied having defied the order wilfully. I have considered the submissions to the effect that the second respondent

acted bona fide, on legal advice and not wilfully and mala fide in not complying with the order. In the judgment whose finding I stand by, I have given full reasons for finding that the respondents acted wilfully and mala fide. I will not repeat them save to state that the respondents did not prove their allegation that I erred in making the finding.

- [6] The argument that I erred in directing the first respondent to comply with the order of 24 November 2020 cannot stand. The order is valid and has not been challenged. I accept the

submissions

on behalf of the applicants and the authorities they relied on to the effect that one of the objects of contempt proceedings is the enforcement of court

orders.

The respondents did not establish an impediment to being compelled to comply with the order.

- [7] The costs order was made in terms of Section 162 of the Labour Relations Act 66 of 1995 as amended and the respondents' submission do not reveal a misinterpretation of that legislative provision. I therefore accept the applicants' submissions that the costs order was granted correctly. For these reasons, the respondents have no prospect of success on appeal.
- [8] Both the law and fairness require that the applicants should not be left out of pockets for opposing this application defending their rights in terms of a judgment in their favour
- [9] In the premises, the following order is made:

Order:

1. The application for leave to appeal is dismissed with costs.

Z. Lallie

Judge of the Labour Court of South Africa

PARTIES:

For the Applicant:

Wesley Pretorius & Associates Inc

For the Respondent: Wikus Van Rensburg Attorneys

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