

SOUTH AFRICA / JUDGMENT

Nehawu obo Legodi v Laerskool Lindopark Primary (J1549/2023) [2024] ZALCJHB 94 (5 March 2024) [2024] ZALCJHB 94

COURT

Labour Court Johannesburg

BEFORE

Daniels

CASE / FILE NUMBER

J1549/2023

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FLYNOTES:

LABOUR – Contempt – Failure to reinstate –
Commissioner
found dismissal substantively unfair – Ordered reinstatement
– Employee reported for duty but he
was turned away –
Employer contemplated instituting review of award – Not
instituted – Failed to advise
employee accordingly –
Failed to show any steps taken to give effect to award –
Respondents were aware of award
and deliberately chose not to
comply – Non-compliance is wilful and male fides –
Respondents are in contempt
of court.
THE
LABOUR COURT OF SOUTH AFRICA
HELD
AT JOHANNESBURG
Case no: J1549/2023
Reportable
In

the matter between:

NEHAWU
OBO FRANS LEGODI
Applicant
and
LAERSKOOL
LINDOPARK PRIMARY First
Respondent
PRINCIPAL
VASI NAIDOO
Second Respondent
Date
heard: 28 February 2024
Date
delivered: 5 March 2024

Summary:

Application to hold respondents in contempt for refusing to give effect to certified arbitration award. Respondents found to be in contempt and ordered to give effect to the CCMA arbitration award.

JUDGMENT

DANIELS J

Introduction

[1] This is an application brought by the applicant to hold the respondents in contempt of court. The applicant was represented in

this matter by the National Education Health and Allied Workers Union (hereafter “the Union”).

Material

facts

[2] The applicant, Mr Frans Legodi (hereafter “Legodi”) was employed as a general worker by the first respondent, the Laerskool

Lindopark Primary (hereafter “the school”).

[3] On 8 August 2017, the school dismissed Legodi for gross insubordination. Aggrieved by his dismissal, Legodi referred a dispute to the Commission for Conciliation, Mediation, and Arbitration (hereafter “the CCMA”) for conciliation. When that failed, Legodi requested arbitration.

- [4] On 24 November 2017, the CCMA issued an arbitration award (hereafter “the award”). In the award, the CCMA commissioner found that the dismissal of Legodi was substantively unfair because the sanction was too harsh. Legodi was reinstated with effect from the date of the award, and the school was directed to issue to him a final written warning valid for 12 months. Legodi was required to report for duty on 11 December 2017.
- [5] Legodi reported for duty at the school on or about 11 December 2017, but he was turned away. The school principal at the time, Mr JJ Van Reenen, informed Legodi that his tender of services would not be accepted because the school was contemplating a review of the CCMA award. Van Reenen further informed Legodi that the issue would be considered at the next meeting of the School Governing Body (hereafter “the SGB”). Ultimately, the SGB did not institute review proceedings but also failed to advise the Union or Legodi about this.
- [6] Neither the Union nor the respondents attempted to explain what happened, if anything, between 2018 and 2021. If the school had taken any steps to give effect to the award, it failed to take the court into its confidence.
- [7] On 28 October 2021, the Union applied to the CCMA to have the award certified. The award was certified and sent to the school. The school took no notice of the certified award.
- [8] On 31 July 2023, the Union addressed a letter to the second respondent, as the current principal of the school. In the letter,
- the Union advised that Legodi would report for duty on 1 August 2023 and if his tender of services was not accepted the Union would
- institute contempt proceedings.
- [9] On 14 August 2023, the second respondent sent a letter to the Union advising that the SGB wished to settle the dispute with Legodi on financial terms. The second respondent proposed a meeting on 25 August 2023, to discuss settlement. At that meeting, the applicant rejected the financial offer and insisted on reinstatement. The second respondent undertook to place the issue on the agenda of the next meeting of the SGB and to revert thereafter.
- [10] On 14 September 2023, the second respondent sent a letter to the Union. In the letter, the second respondent stated that the SGB had considered reinstating the second applicant and decided against it. In the second respondent’s words: “My mandate is to advise you that the SGB will not reinstate your member.” In addition, the second respondent informed the Union that the SGB had doubled its initial financial offer to settle the dispute. Significantly, the second respondent does not state that she motivated the SGB to comply with the award.
- [11] At court, the second respondent alleged that the respondents cannot take Legodi back into its service because:

11.1 The SGB has already adopted an annual budget and it cannot find further funds to engage Legodi,

11.2 The SGB has already engaged another worker in the place of Legodi, and it would be forced to retrench that worker,

11.3 The SGB had taken its decision, and no single individual can reverse it,

11.4 Legodi did not tender his services since he first did so shortly after the award was issued.

Legal

analysis

[12] Section 143(1) read with section 143(3) of the Labour Relations Act No. 66 of 1995 (hereafter “the LRA”) provides that a certified arbitration award may be enforced as if it is an order of the Labour Court. Where a certified award orders something other than the payment of money, the award may be enforced by way of contempt proceedings in the Labour Court.

[13] Inasmuch as the certified award is deemed to be an order of the Labour Court, the LRA requires that it be accorded due respect.

[14] As Cameron JA (as he then was) so stated in *Fakie NO v CCII Systems (Pty) Ltd (Fakie)*:^[1]

“[6] It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has in general terms received a constitutional ‘stamp of approval’, since the rule of law – a founding value of the Constitution – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained’. (Own emphasis)

[15] As Cameron JA eloquently put it, in *Fakie*, when court orders are disregarded, this “sullies the authority of the courts and detracts from the rule of law”.

[16] The Constitutional Court recorded in *Pheko v Ekurhuleni Metropolitan Municipality*^[2] that the willful disobedience of an order made in civil proceedings is contemptuous and a criminal offence. Contempt in the context of civil proceedings is coercive, and not punitive, in character.

[17] In this matter, it was common cause that the award was certified, that it was served on the respondents, and there had been no compliance with the award. Once the applicant has proven the existence of the order; service of the order; non-compliance (beyond reasonable doubt) the respondent bears an evidential burden in relation to wilfulness and mala fides.^[3] If the respondent fails to establish reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

[18] Here, the respondents advanced no evidence that the non-compliance was neither wilful nor male fides. Both respondents were aware of the award and deliberately chose not to comply. The SGB adopted a budget which did not cater for the reinstatement of Legodi. The SGB employed another in his place. The SGB turned Legodi away on the pretext that it would review the award. But, when the SGB decided not to review, it failed to call him back. In

these circumstances, Legodi can hardly be blamed for the apparent inaction between 2018 and 2021. At most, both parties are equally responsible for the period of inaction. In the circumstances, the respondents' non-compliance with the award is wilful and male fides.

[19] In Pheko[4] at para 47, the court stated that when: "a court order is disobeyed, not the person named or party to the suit but all those who, with knowledge of the order, aid and abet the disobedience or wilfully are party to the disobedience are liable". The second respondent, despite the evidentiary burden to show that her disobedience was not wilful, tendered no evidence that she took any steps to comply with the award.

[20] The following sections of the South African Schools Act No 84 of 1996 are relevant:

20.1 In respect of some functions, the school principal represents the Head of Department of Education. The school principal is responsible

for the professional management of all educators and support staff - section 16A(2)(a)(ii).

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20.2 The governance of the school resides in the SGB - section 16(1). The SGB may establish posts for non-educators and employ individuals additional to the establishment determined under the Public Service Act, 1994.

20.3 All public schools have juristic personality (section 15). The implication of this is that the first respondent was correctly cited

and the SGB, as the governance structure of the first respondent, is bound by any decision in relation to the first respondent.

[21] None of the provisions of the Schools Act permit the SGB, or the second respondent, to avoid compliance with the certified award. The second respondent stated that she is an ex officio member of the SGB but cannot tell it what to do. Importantly, the second respondent does not state what she did, as an ex officio member of the SGB, to ensure compliance with the award.

[22] The other arguments made by the respondents may quickly be disposed of as follows:

22.1 The SGB has adopted an annual budget and has no funds to engage Legodi. Even if this argument had merit, which it does not, the

respondent themselves made a financial offer to settle the dispute, which would have required funds not provided for in the budget.

Clearly the budget is somewhat flexible. The annual budget is no excuse.

22.2 The SGB has engaged another worker in the place of Legodi. This court simply cannot allow the LRA, and its dispute resolution machinery, to be frustrated so easily. The respondents must take the consequences of its own conduct. They chose not to review the award, and they chose not to comply with the award either.

22.3 The SGB has taken a decision not to comply, and no single individual can reverse it. This is contemptuous of the CCMA, and this court. If this were permissible, rule of law would quickly become a thing of the past.

22.4 Legodi did not tender his services since he first did so shortly after the award was issued. Though there may well be good reasons,

such as financial limitations, this court cannot speculate as to the reasons why Legodi did not report for duty on a regular basis between 2017 and 2021. Importantly, the respondents do not claim that Legodi waived his rights or that his rights under the award had prescribed.

Respondents simply claimed that reinstatement is impractical given the effluxion of time. This is no excuse. At best, both parties are equally to blame for the lengthy periods of inaction.

[23] In all the circumstances, the evidence establishes, beyond reasonable doubt, that respondents are in contempt of court.

Costs

[24] The application was made necessary by the respondents' deliberate non-compliance with an arbitration award. Its defences

were weak, bordering on frivolous. There is no reason in law and fairness why the applicant should be denied costs.

Conclusion

[25] The application is successful. The respondents are indeed in contempt of court. In the circumstances, I make the following order:

25.1 The second respondent is sentenced to one month's imprisonment, wholly suspended for 60 (sixty) days, subject to the respondents'

compliance with the arbitration award issued by the CCMA under case reference GATW12153-17 by:

25.1.1 Reinstating Mr Legodi in the employ of the first respondent, with effect from 24 November 2017,

25.1.2 Upon reinstatement, issuing a final written warning to Mr Legodi, valid for 12 months.

25.2 The respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved.

R Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Union official

For the Respondent: Adv Nel

Instructed by: Raymond Hauptfleish Attorneys

[1]

[2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006)

[2] 2015 JDR 0841 (CC) at para 28

[3] Fn. 1

[4] Fn. 2

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