

SOUTH AFRICA / JUDGMENT

Ngudle v Minister of Defence and Military Veterans (37450/2015) [2017] ZAGPPHC 919 (14 December 2017) [2017] ZAGPPHC 919

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen

CASE / FILE NUMBER

37450/2015

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

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 37450/2015

14//12/2017

Not reportable

Not of interest to other judges

Revised

MICHEAL NGUDLE APPLICANT

and

MINISTER OF DEFENCE AND MILITARY

VETERANS RESPONDENT

JUDGMENT

VAN DER WESTHUIZEN, AJ

- [1] The applicant applies for an order in terms whereof the respondent is ordered to implement the resolution/s of the Board of Inquiry convened as per Convening Order No. 34/2008 dated 1 September 2009 in respect of the applicant. The applicant further seeks an order directing the respondent to do a rank and administrative review of the applicant's employment status and to pay the applicant all money due to him resulting from the rank and administrative review.

- [2] The relevant background can be summarised as follows:
- (a) The applicant joined the SANDF in May 1994 and was given the Force No. 9409301OPE. The applicant's joining of the SANDF followed upon the integration of liberation forces into the SANDF that were previously deployed against the previous regime.
 - (b) During 1994 the applicant became ill. Details of the illness are not provided. As a result, the applicant could not attend work and on his return, was arrested for being absent without leave. Those charges were subsequently not proceeded with and were withdrawn during September 1998.
 - (c) In 2001 the applicant was recalled and he was reintegrated into the SANDF. His status was rectified and backdated to 1994.
 - (d) During November 2001 the applicant was approved for interim service in the SANDF.
 - (e) Following on his reintegration and approval for interim service, the applicant was offered a contract for a specific period. He was further offered compensation in settlement of any claim that the applicant may have had against the SANDF for the period 1994 to 2001. In February 2002 the applicant accepted the contract and the amount of compensation. The applicant was employed with the rank of Sergeant within the South African Air Force.
 - (f) Since April 2004 the applicant addressed grievances in respect of his integration and in particular in respect of the rank awarded and the monetary compensation.
 - (g) During 2004 the respondent offered the applicant deployment as a Military Practitioner in the Medium Term Service System in the Permanent Force which the applicant accepted. A second employment contract was entered into between the applicant and the respondent. Subsequently, the applicant was permanently enlisted.
 - (h) The applicant's grievances were referred to the Advisory Personnel Committee during
2005. During 2007 the applicant's grievances were dealt with. According to the applicant he was not advised that his grievances had been dealt with. He was apparently not advised of the outcome thereof. The Grievance Committee determined that the agreement was accepted and signed by the applicant in February
2002. In terms thereof, he accepted the compensation offered, and his grievance was settled.
- (i) On 1 September 2008 a Board of Inquiry was set up. The applicant was summoned during February 2009 to attend the Board of Inquiry and to give evidence "concerning his administrative action", presumably following on his grievances. During July 2009 the applicant was advised that the Board of Inquiry had concluded its inquiry relating to the applicant and that it was sent for determination to LEGSATO.

- (j) The applicant submits that he was not advised in respect of the Board of Inquiry's findings and recommendations. The applicant further submits that he was not advised of the outcome of LEGSATO's determination.
 - (k) As a result of the failure of the respondent, or its relevant officials who attended to the applicant's grievances, to advise on the outcome, the applicant felt obliged to launch the present proceedings. The applicant allegedly only became aware of the findings and recommendations of the Board of Inquiry and LEGSATO when the answering affidavit was filed.
 - (l) The determination by LEGSATO was that the applicant was correctly placed as Sergeant in 2001.
- [3] The applicant approached this application on the premise that no rank and administrative review was undertaken. However, in the replying affidavit the stance is taken that the recommendations were never implemented. There is no merit in the about face in the replying affidavit for what follows.
- (a) The appellant relies upon selective passages in a letter dated 3 February 2010 from LEGSATO. The first passage relied upon constitutes at best the posing of a rhetorical question. Nothing flows there from as the said letter in its entire context clearly indicates that the applicant is bound by his acceptance of the offer of compensation and contract of employment.
 - (b) The second passage that is relied upon relates to a concluding paragraph that reads "5. For your attention and further action." There is no magic in those words suggesting that LEGSATO had accepted the recommendations of the Board of Inquiry.
 - (c) The applicant submits that the recommendations of the Board of Inquiry are to be accepted and implemented on the ground that it is a Statutory established entity. The submission is further that LAGSATO has no legal approval and no jurisdiction to "ignore" the recommendation of the Board of Inquiry. There is no merit in that submission. The recommendations of the Board of Inquiry are mere recommendations. Those are to be considered by a different department and are subject to determination, i.e. approval or rejection.
 - (d) Furthermore, the findings of the Board of Inquiry clearly indicate that the arrest and intended prosecution of the applicant during 1998 constituted "maladministration ". Non constat that the subsequent conclusion of an employment agreement and the acceptance of the offered compensation constituted "maladministration". For that the applicant was compensated. The Board of Inquiry further found that the rank issue had been determined in accordance with the deliberations of all relevant stakeholders.
- [4] It is common cause that the applicant's own representative, MK, reached a compromise on the rank of the applicant. i.e. that of Sergeant. That issue was finally and decisively determined by the relevant authority. The determination of the issue of the applicant's rank

in terms of the aforementioned agreement reached by all the stakeholders, cannot be undone. Furthermore, the applicant accepted the rank and employment entered into during 2002 and 2004. The applicant has failed to prove that he was in fact under duress at the time. The subsequent circumstances prove the opposite.

[5] The applicant's curriculum vitae clearly reveals that during the period 1996 to 2000 the applicant was gainfully employed in the civilian employment sector. As such, the applicant has failed to prove that he was in fact employed, or employable, in the military sector prior to 2001.

[6] It follows that the applicant has failed to indicate any administration action that requires consideration and review.[1]

I grant the following order:

- (a) The application is dismissed;
- (b) The applicant is to pay the costs.

C J VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant: D B Ntsebeza SC

S X Mapoma

Instructed by: Mabini

Inc

On behalf of Responqent: F M M Snyman

J Sithole

Instructed by: The

State Attorney

Date Heard:

9 November 2017

Judgment

delivered: 14 December 2017

[1] See Minister of Defence and Military Veterans v Motau et al 2014(5) SA 69 (CC)

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/ZAGPPHC/2017/919.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ngudle-v-minister-unknown-topic-agpphc-2017>

Prepared on 24 October 2026 · Esheria