

SOUTH AFRICA / JUDGMENT

Phiri v Magona Security (Pty) Ltd and Others (J 764/2023) [2023] ZALCJHB 310 (8 November 2023)

[2023] ZALCJHB 310

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

J 764/2023

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THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J

764/2023

In the matter between:

MATSHIDISO
MERRIAM PHIRI
(id
no:[...])
Applicant
And
MAGENA
SECURITY (PTY) LTD
(REG
NO:[...])
First
Respondent
QUINTON
DUNN
(ID

NO:[...])
Second
Respondent
PRIVATE
SECURITY PROVIDENT FUND
Third
Respondent
PENSION
FUNDS ADJUDICATOR
Fourth
Respondent

Heard: 19 October 2023
Date
Reserved: 02 November 2023

Delivered: 08 November 2023
(This judgment was
handed down electronically by circulation to the parties' legal
representatives, by email, publication
on the Labour Court's
website and released to SAFLI. The date on which the judgment is
delivered is deemed to be 08 November
2023.)

JUDGMENT

VAN NIEKERK, J

- [1] The applicant seeks an interim order, by way of an application brought ex parte, calling on the first, second and third respondents to show cause why they should not be held in contempt of this court for failing to comply with a determination issued by the fourth respondent, the pension fund adjudicator. The determination was issued on 27 January 2023 in terms of section 30M of the Pension Funds Act, and requires the third respondent to register the first respondent as a participating employer and to register the applicant as a member. The determination further requires the first respondent to pay the fund arrear contributions in respect of the applicant, and to pay the applicant her withdrawal benefit, including the arrear contributions.
- [2] When the matter was called, I requested the applicant's representative, Mr Pebe, to make submissions on the issue of jurisdiction and specifically, whether this court has jurisdiction to enforce determinations made by the pensions fund adjudicator. Mr Pebe relied on section 30O of the Pensions Funds Act to submit that the determination was deemed to be 'a civil judgment of any court of law had the matter in question been heard by such court...' and thus enforceable by this court. Mr Pebe submitted further that the matter arose in an employment context, and that the court had jurisdiction on that basis.

- [3] I afforded Mr Pebe the opportunity to file supplementary heads of argument on the issue. He declined the opportunity; no supplementary heads were filed within the 10-day period allowed.
- [4] This court is a creature of statute. Its jurisdiction is primarily established by section 157 of the Labour Relations Act. To the extent that Mr Pebe submitted that the determination was made in an employment context, the Constitutional Court has made clear that this is not a basis on which the court may exercise jurisdiction. In *Baloyi v Public Protector and Others*[1] the Constitutional Court said the following (footnotes omitted):
- [23] The legislation in terms of which an assignment would be made in the context of the present matter is the LRA. Section 157(1) of the LRA provides for the exclusive jurisdiction of the Labour Court in all matters that – in terms of the LRA or other law – are to be determined by the Labour Court. In doing so, it fulfils one of the stated purposes of the LRA, which is to establish the Labour Court and the Labour Appeal Court as superior courts, with ‘exclusive jurisdiction to decide matters arising from the Act’ (emphasis added) Section 157 (1) reads:
- “Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.”*
- Sections 68(1), 77(2)(a), 145 and 191 of the LRA proffer examples of matters that “are to be determined by” the Labour Court and are therefore, by virtue of section 157(1), within the exclusive jurisdiction of the Labour Court. This Court has found, moreover, that the High Court’s jurisdiction in respect of employment-related disputes is ousted only where the dispute is one for which the LRA creates specific remedies, including, for example, unfair dismissal disputes.
- [24] Crucially, section 157(1) does not afford the Labour Court general jurisdiction in employment matters ... (own emphasis).
- [5] I am unaware of any provision in the LRA or any other statute that confers jurisdiction on this court to enforce determinations issued by the pension funds adjudicator. To the extent that Mr Pebe relies on the Pension Funds Act, that does no more than deem a determination to be a civil judgment of any court of law, had the matter in question been heard by ‘such court’. This court is a court of law (see section 151(1) of the LRA), but I do not understand this to mean that the applicant is entitled to approach this court to hold the respondents in contempt of the determination. There are instances where the court may enforce decisions made by other bodies by way of contempt proceedings, but these are limited to certified arbitration awards, as provided by section 143(4). There is no provision in the LRA or any other statute that affords a determination made by the pension fund adjudicator the status of an order of this court. In the absence of any statutory provision that expressly confers jurisdiction on this court to enforce a determination issued by the pension fund adjudicator, the application stands to be dismissed for lack of jurisdiction. In any event, the determination, in most instances, requires the payment of money. Contempt proceedings are not appropriate in matters where the determination is one sounding in money - the

enforcement of such determinations ought properly to proceed by way of the issuing of a writ of execution, in this case, by the Magistrates' Court or the High Court.

I make the following order:

1. The application is dismissed.

André van Niekerk

Judge of the Labour Court of South Africa

Appearances:

For the applicant:

A M Pebe, Molale Pebe Inc Attorneys

[1] 2021 (2) BCLR 101 (CC), footnotes omitted.

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Prepared on 10 October 2026 · Esheria