

SOUTH AFRICA / JUDGMENT

Rampai v Mangaung Metropolitan Municipality (P117/20) [2022]

ZALCPE 14 (29 June 2022)

[2022] ZALCPE 14

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P117/20

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IN

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not

Reportable

CASE

NO: P117/20

In

the matter between:

ITUMELENG

RAMPAI

Applicant

and

MANGAUNG

METROPOLITAN MUNICIPALITY

Respondent

Heard:

26 November 2021

Delivered:

This judgment was handed down electronically by circulation to the Applicant Trade Union and the Respondent's 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 16h00 on 29 June 2022.

JUDGMENT

LALLIE J

- [1] The applicant launch this application for contempt of court in an attempt to enforce an arbitration award issued by the South African Local Government Bargaining Council (the bargaining council) on 26 April 2019. The application is opposed by the respondent.
- [2] The applicant is employed by the respondent at its Labour Relations Directorate. He is one of the respondent's three employees who referred a dispute against the respondent to the bargaining council relating to the interpretation and application of a collective agreement. Having arbitrated the dispute, the bargaining council issued an award in the following terms:

"The Respondent, Mangaung Metropolitan Municipality failed to comply with paragraph

8.8 read with paragraph 8.6 of the Collective Agreement for the Free State Division of the SALGBC, and the Respondent must comply. The Respondent is ordered to extend the opportunity of acting to the Applicants, Itumeleng Rampai, Baesi Lekgela, and Thabo Mokhali immediately upon receipt of this award.

The Respondent, Mangaung Metropolitan Municipality failed to comply with paragraph

8.7, and the Respondent must comply. The Respondent is ordered to fill the posts, General Manager: Labour Relations, Manager: Labour Relations, and two (2) X Senior Labour Relations Officers by no later than 31 October 2019, which is six (6) months from the date award was issued."

- [3] The respondent failed to comply with the award and its efforts to have it rescinded were unsuccessful. On 30 October 2019 the applicant had the award certified in terms of section 143 of the Labour Relations Act[1] (the LRA). The respondent persisted with its non-compliance even after the award had been certified. The conduct resulted in the filing of the application at hand.
- [4] The test for contempt of court is settled. It was confirmed in *Matjhabeng Local Municipality v Eskom Holdings (Pty) Ltd*[2] a judgment the applicant sought to rely on. The test requires the applicant to prove the existence of a court order, the bringing of the order to the respondent's attention and the respondent's non-compliance with the order. When the above have been proved the respondent has to prove that the non-compliance with the order was neither wilful nor mala fide. It is not in dispute that the applicant proved the factors he was required to prove.

- [5] In an attempt to prove the defence that the non-compliance with the certified award was not wilful and mala fide the respondent raised the defence of res judicata. It was further alleged that the applicant may not approbate and reprobate by referring the dispute to the bargaining council afresh and also seeking to enforce the certified award. The respondent argued that by referring the dispute to the bargaining council, the applicant waived his right to the award.
- [6] The respondent expressed its intention to have the certified award and the ruling refusing its rescission reviewed and set aside. The respondent also sought to rely on evidence which it would have led had it been represented at arbitration. That evidence would, in the respondent's view, have resulted in an award in its favour.
- [7] The applicant denied that the matter is res judicata and submitted that in the second dispute that was referred to the bargaining council they sought compensation which is totally different from the relief they sought in the dispute which culminated in the certified award.
- [8] The defences the respondent sought to rely on did not prove that its non-compliance with the certified award is not wilful and mala fide. The respondent did not make all the allegations which prove the defence of res judicata. The defence of waiver was also not established. Waiver is not inferred lightly. The respondent had a duty to make averments which proved that the applicant evinced conduct which support the conclusion that he had abandoned and waived his rights in terms of the certified award. The respondent did not fulfil that obligation.
- [9] An arbitration award and a rescission ruling remain valid until set aside by a court which has the necessary jurisdiction. The respondent elected not to take the certified award and the rescission ruling on review. It must therefore stand and fall by its election. The expression of the intention to exercise the right to review was insufficient. Raising in this application the defence the respondent would have raised at arbitration had it attended it cannot assist the respondent in this application. The respondent's non-compliance with the certified award is, in the circumstances, wilful and mala fide and constitutes contempt of court.
- [10] The law and fairness require that the applicant should not be out of pocket as a result of the respondent's wilful and mala fide non-compliance with the certified award.
- [11] In the premises, the following order is made:

Order:

1. The respondent is guilty of contempt of court.
2. The respondent is ordered to comply with paragraph 24 of the certified award within 10 days.

3. The respondent is ordered to comply with paragraph 25 of the certified award within 3 months.
4. The respondent is ordered to pay the applicant's costs.

Z. Lallie

Judge of the Labour Court of South African

[1] Act 66 of 1995 as amended.

[2] 2018

(1) SA (1) (CC) at para 62.

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