

SOUTH AFRICA / JUDGMENT

SAMWU obo Dorfling v Gamagara Municipality and Another (J1579/17) [2021] ZALCJHB 293 (18 September 2021) [2021] ZALCJHB 293

COURT

Labour Court Johannesburg

BEFORE

Tlhotlhamajane

CASE / FILE NUMBER

J1579/17

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

Source record

IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J 1579/17

In the matter between:

SAMWU obo
DORFLING Applicant
and
GAMAGARA
MUNICIPALITY First
Respondent
CLEMENT
ITUMELENG Second
Respondent

Heard: 3 September 2021

(Virtual hearing)

Delivered: This

judgment was handed down electronically by circulation to the parties' legal representatives by email, and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 18 September 2021 at 12:00

JUDGMENT

TLHOTLHALEMAJE, J

[1] In this application, the applicant seeks a declaratory order that the second respondent (Municipal Manager) be found in contempt of court for failing to comply with a certified arbitration award, and further that he be incarcerated or have a fine imposed as a sanction.

[2] The factual background to this application is summarised as follows;

2.1 SAMWU's member, Mr Dorfling was appointed as Superintendent in the Traffic Department of the first respondent (Municipality). In 2016, Dorfling was subjected to a disciplinary enquiry related to four allegations of misconduct. He was placed on suspension and only permitted to perform certain law enforcement functions. Following a disciplinary enquiry, he was found guilty on two of the allegations and was issued with a final written warning.

2.2 A dispute arose to the extent that Dorfling alleged that despite the sanction of a final written warning, he was not permitted to perform his normal duties as a Superintendent.

2.3 Following a referral of an alleged unfair labour practice dispute to the SALGBC, an arbitration award was issued on 24 August 2016 in terms of which the Municipality was ordered to reinstate Dorfling to his old position of Superintendent in Traffic.

2.4 The arbitration award was certified in accordance with section 143(1) and

(3) of the Labour Relations Act[1] (LRA). The applicant's contention is that the Municipality as represented by the Municipal Manager has failed or refused to comply with the arbitration award, hence the contempt application before the Court.

2.5 Since the ex parte application and a rule nisi was granted on 24 November 2017, this application has been before the Court on multiple occasions and either removed from the roll or postponed for a variety of reasons.

2.6 In a founding affidavit deposed to by SAMWU's Provincial Secretary, Mr Benjamin Mdluli, it was averred that since the arbitration award, the Municipality has refused to permit Dorfling to perform his normal duties of a Superintendent and effectively only allowing him to perform those of an ordinary Traffic Officer and thus demoted him. It was further averred that the Municipality has also refused to pay him his remuneration.

2.7 At these proceedings, it was conceded on behalf of Dorfling that his salary at the level of Superintendent was paid in full, and that what he was concerned with was that he was still not allowed to perform his full normal duties.

[3] The principles applicable in contempt proceedings were recently restated in Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others[2] as flows;

[37] As set out by the Supreme Court of Appeal in *Fakie*, and approved by this Court in *Pheko II*, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed, and the respondent bears an evidentiary

burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.'

(Citations omitted)

[4] Applying the above principles to the facts of this case, it can be accepted that there is an arbitration award against the Municipality, which was served on it. The contention however that there was non-compliance with the award lacks merit, more particularly in the light of the averments made in the explanatory affidavit which was filed by the Municipality's Acting Municipal Manager (NM Grond). There was no replying affidavit from the applicants, and to that end, the uncontested averments and submissions are that;

4.1 The Municipality has complied with the arbitration award in full, and the applicant has not made out a case for the relief that is sought, since nothing contained in the founding affidavit showed that the erstwhile City Manager was in contempt of Court.

4.2 To the extent that it was alleged in the founding affidavit that there was non-compliance with the arbitration award as Dorfling was not reinstated or paid his remuneration, the uncontested facts demonstrated that these allegations were indeed false, as Dorling was not only reinstated into his previous position, but has always been paid his remuneration in full.

4.3 The main explanation as to the reason Dorfling was not permitted to perform his initial functions in full were that;

4.3.1 The allegations leading to the disciplinary enquiry and the ultimate sanction involved dishonesty and irregularities in relation to examinations and testing for driving licenses and related offences.

4.3.2 Resulting from these allegations, the Municipality was obliged to temporarily prevent Dorfling from performing related functions since his conduct amounted to certain contraventions of the National Road Traffic Act[3] (The NRTA), which effectively barred him from performing those functions.

4.3.3 Since Dorfling was found guilty of charges involving dishonesty related to the issuing of drivers licenses, the Provincial Department of Transport, Safety and Liaison (the Governing Body for purposes of authorising traffic officers to perform driver's license examinations and testing), had instituted proceedings against Dorfling to terminate his authority to perform these duties.

4.3.4 Resulting from the above process, Dorfling was informed on 13 March 2017 that he was not allowed to render specific functions, including the operation of the E-NATIS system which relates to issuing of licenses.

4.3.5 Effectively therefore, Dorfling on account of the allegations of dishonesty could not in line with the applicable legal prescripts, be allowed to perform the functions of an Examiner or operate the E-NATIS system, something that he and SAMWU have always been aware of. Thus, the Municipality is legally prevented from allowing Dorfling to perform the functions in question

- [5] In the light of these above uncontested averments, I fail to appreciate how in circumstances where the Municipality is prohibited by law to let Dorfling perform certain functions, it cannot possibly be said that it should be found to be in contempt of Court. It was uncontested that as a result of the 'Notice of Administration Act against an Examiner for Driving Licenses', issued on 22 February 2017 by the Provincial Department, Dorfling was required to surrender his original registration certificate of the Law Administration section of the Department. Again on 13 March 2017, he was further informed that the MEC of the Department had taken a decision to cancel his registration as examiner of Driving License in terms of Section 3 of the NRTA. This was in respect of the two incidents where it was found that he had not complied with the provisions of that Act in the performance of his duties.
- [6] Through these contempt proceedings, what SAMWU and Dorfling sought to achieve is for the Municipality to effectively flaunt legal prescripts, in order for him to continue as if it were business as usual, and further in circumstances where his dishonest conduct had effectively barred him from performing certain functions.
- [7] It has long been established in *Schierhout v Minister of Justice*[4], that it is a fundamental principle of our law that a thing done contrary to the direct prohibition of the law is void and of no effect. Effectively, Dorfling fails to appreciate that even if the Municipality was to allow him to carry out his normal duties of being an examiner and processing driver's licenses in conflict with the legal prescripts, the result thereof would be to render the outcomes thereof to be void and of no legal effect. In any event, it is legally impermissible for the Municipality to even attempt to allow him to perform his previous normal duties. To the extent that the Municipality cannot be allowed to do what is legally impermissible, the applicant has not discharged an evidentiary burden to establish contempt on its part or that of its Municipal Manager.
- [8] In the end, it is correct as also submitted on behalf of the Municipality that no case has been made out in the founding affidavit, and what is evident however is that both SAMWU and Dorfling sought to mislead this Court with untruths, and only to concede in these proceedings that indeed Dorfling was paid his full salary.
- [9] It is further extraordinary that SAMWU and Dorfling would have since March 2017, persisted with this clearly ill-conceived and vexatious application, which amount to an abuse of court process. From when the explanatory affidavit was filed and served in November 2017, and to

which there was no reply, Dorfling was aware of the legal impediments preventing him from performing his normal duties arising from the Notices issued by the Department as far back as February 2017. In circumstances such as these, SAMWU ought to have reflected on the folly of its doomed application since August 2017 when the rule nisi was granted. To the extent that it failed to do so, it is my view that the requirements of law and fairness dictate that it should be burdened with the costs of this application.

[10] Accordingly, the following order is made;

Order:

1. The rule nisi granted on 4 August 2017 is discharged, and the first and second respondents are not found to be in contempt of Court.
2. SAMWU is ordered to pay the costs of this application.

Edwin Tlhotlhamajje

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr

P Ndou of Ndou Attorneys

For the 1st – 2nd Respondents: Adv. M Louw, instructed by Peyper Attorneys

[1] Act 66 of 1995, as amended

[2] (CCT 52/21) [2021] ZACC 18; 2021 (9) BCLR 992 (CC)

[3] Act 93 of 1996

[4] 1926 AD 99 at 109

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/ZALCJHB/2021/293.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/samwu-obo-dorfling-v-gamagara-municipality-and-others-unknown-topic-alcjhb-2021>

Prepared on 10 October 2026 · Esheria