

SOUTH AFRICA / JUDGMENT

Sefokolo v Rand Plastics and Others (J1418-20) [2022]

ZALCJHB 18 (23 February 2022)

[2022] ZALCJHB 18

COURT

Labour Court Johannesburg

BEFORE

T. Deane

CASE / FILE NUMBER

J1418-20

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IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case no: J1418-20

In the matter between:

ALFRED KHUTLANG

SEFOKOLO

Applicant

and

RAND

PLASTICS

First Respondent

COMMISSIONER THANDILE

KHONA N.O.

Second Respondent

PAUL

KOFFLER

Third Respondent

Heard:

11 February 2022

Delivered:

23 February 2022

Summary: Contempt

– substantial compliance – absence of mala
fides or wilfulness to the extent there was not literal
compliance

JUDGMENT

DEANE, AJ

Introduction

1. This is a contempt of court application to place the First and Second Respondents (collectively the Respondents) in contempt for its failure to comply with an arbitration award under case number MEGA55094, dated 16 October 2020 (Award).
2. The Respondents are opposing the contempt application and have filed an answering affidavit.

Background

to the dispute

3. The employee (Applicant) was employed by Ingron, a temporary employment service, which placed him at Rand Plastic on 14 May 2016. He worked at Rand Plastic continuously while being paid by Ingron. In February 2019, the contract that Ingron had with Rand Plastic came to an end. The Applicant was subsequently informed by Rand Plastic that they did not want him to leave and the Applicant was then asked to sign a contract with CMC Global, another temporary employment service agency. The Applicant was thereafter paid by CMC Global but continued to work at Rand Plastic until his dismissal on 3 May 2019.
4. At an arbitration hearing, the commissioner found that the Applicant was dismissed and that the dismissal was both procedurally and substantively unfair. The commissioner ordered reinstatement and a backpay of R45 032.00. The Award of 16 October 2020 was certified on 09 December 2020. At the time of his dismissal, the Applicant was employed as a picker, also known as a general worker.
5. The Respondents defence to the contempt application are the following:
 - 5.1. The Award has not been certified as provided for in section 143(3) of the Labour Relations Act[1];
 - 5.2. The First Respondent has complied with the Award, alternatively, substantially complied with the Award;
 - 5.3. The failure by the First Respondent, if it is held that it is failing to comply with the Award, is neither deliberate nor mala fide; and
 - 5.4. The First Respondent can no longer comply with the Award due to the Applicant's retrenchment with effect from end January 2021.

Analysis

6. Regarding the first ground of defence, the defence would fail due to the fact that on the papers before me there is a Certification of Award in terms of section 143 of the LRA[2].
7. Regarding the second ground of defence, the Respondents submit that by the time that the Award was made, and the Applicant was required to report to the premises of the First Respondent on 2 November 2020, the post that the Applicant had occupied prior to his dismissal no longer existed due to a restructuring of the First Respondent's operations. It is submitted that it is for this reason that the Applicant could not be reinstated herein.
8. As one of the employee's placed by CMC Global at the First Respondent, the Applicant had agreed to be employed in any other post and/or any other site[3].
9. In addition, on or about 30 October 2020, the Applicant was paid the back pay of R45 032.00 as awarded by the commissioner in paragraph 6.5 of the Award[4]. CMC Global in terms of its obligations to Rand Plastics administered this payment.
10. There is uncontested evidence that the Applicant was transported to the CMC Global premises on 2 November 2020 where he met with Abel Nsibande and Gerrit Duvenhage after initially reporting to the First Respondent's premises. The Applicant was informed that he could not be accommodated at the Rand Plastics site because there was not a position of a picker available for him since Rand Plastics had undergone a process of restructuring during the Applicant's absence.
11. From the papers before this Court, it would seem that the First Respondent made various attempts[5] to accommodate the Applicant at another position that was specifically created for him. On 18 December 2020, the Applicant was informed in writing of his contemplated retrenchment because of his failure to accept an alternative position and because he could no longer be accommodated[6].
12. It should also be noted that since his reinstatement, the Applicant had been paid his normal weekly wages[7].
13. For reasons not directly relevant to the contempt application, the Applicant failed to attend various consultation meetings, save to say that the Applicant was subsequently retrenched after receiving the termination of employment letter[8]. The Applicant received his final payment of monies due to him on 29 January 2021.
14. It is clear that the First Respondent has fully complied with the monetary order made in the Award.
15. Regarding reinstatement, in the most recent authoritative judicial exposition on the law of contempt, the Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Ltd And Others*[9] reiterated the basic test for contempt set out in *Fakie NO v CCII Systems (Pty) Ltd* [10], viz:

'It should be noted that developing the common law thus does not require the prosecution to lead evidence as to the accused's state of mind or motive: Once the three requisites... have been proved, in the absence of evidence raising a reasonable doubt as to whether the accused acted wilfully and mala fide, all the requisites of the offence will have been established. What is changed is that the accused no longer bears a legal burden to disprove wilfulness and mala fides on a balance of probabilities, but to avoid conviction

need only lead evidence that establishes a reasonable doubt[11].'

16. The Constitutional Court also noted the constitutional objective underlying contempt proceedings as being the preservation of the court's authority by ensuring that its orders are complied with:

'[48] To ensure that courts' authority is effective, s 165(5) [of the Constitution] makes orders of court binding on 'all persons to whom and organs of state to which it applies'. The purpose of a finding of contempt is to protect the fount of justice by preventing unlawful disdain for judicial authority. Discernibly, continual non-compliance with court orders imperils judicial authority.'[12]

17. In this case, it is clear that there is neither a flat refusal of the employer to reinstate the employee when he presented himself at the employer's premises with the court order, or where the employer tells the employee to come back on another day or to report at other premises as part of a delaying strategy to avoid adhering to the Award.
18. Herein, the employer immediately took steps in that the Applicant was paid the back pay as awarded by the commissioner and steps were taken to reincorporate the Applicant in the workplace as best it could despite the fact that the post the Applicant occupied prior to his dismissal no longer existed. Importantly, a position was specially created for him as a vehicle assistance. The position created was on the same salary scale, however, for reasons only known to the Applicant, the Applicant refused to accept the position.
19. From the papers before this Court, it is clear that the First Respondent was thereafter left with no other alternative but to retrench the Applicant.
20. In this regard, the First Respondent refers to *Sepoa v Imperial Cold Logistics*[13] with approval where the employer, after the original position no longer was available, attempted to have the employee placed in an alternative position and the Labour Court dismissed the contempt application, effectively finding that it is not always required that there be exact compliance with an award or order.
21. The applicable legal principles are clear, that to be held in contempt the employer must have acted mala fides.

22. In this case the First Respondent, under the circumstances as mentioned above, has substantially complied with the Award and to the extent that it could not, being the reinstatement of the Applicant, there is no evidence that there was any deliberate or mala fides conduct by the First Respondent and for that matter on the part of the Second Respondent, which would justify a contempt ruling against them.

Conclusion

23. The Applicant's contempt application ought to be dismissed and that the rule nisi ordering the Respondents to appear, is discharged.
24. In the premise the following order is made:

Order

1. The First and Second Respondents are found not to be in contempt.
2. The rule nisi of 22 October 2021 is discharged.
3. There is no order as to costs.

T. Deane

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: AK Sefoloko

For the Respondent: Adv Gvd. Westhuizen

- [1] No 66 of 1995.
- [2] See: last page to the Notice of Motion.
- [3] See: Annexure AA4, clauses 3.2 and 10 thereof.
- [4] See: Annexure AA5.
- [5] See: Respondent's Opposing Affidavit, pg. 5-6
- [6] See: Annexure AA6.
- [7] See: Annexures AA7.1 – AA7.10.
- [8] See: Annexures AA13 & AA14.1-AA14.3.
- [9] 2018 (1) SA 1 (CC).
- [10]

[2006] ZASCA 52; 2006 (4) SA 326 (SCA) at para 23.

[11] Matjhabeng at para 62.

[12] *ibid* para 48.

[13]

(2018) 39 ILJ 1146 (LC).

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