

SOUTH AFRICA / JUDGMENT

Semela and Another v Gauteng Department of Economic Development and Others (J590/21) [2023] ZALCJHB 284 (17 October 2023)

[2023] ZALCJHB 284

COURT

Labour Court Johannesburg

BEFORE

M T M Phehane

CASE / FILE NUMBER

J590/21

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J590/21

In the matter between:

MALEFU SEMELA

First Applicant

PATRICK LESEJANE

Second Applicant

and

GAUTENG DEPARTMENT OF ECONOMIC

DEVELOPMENT

First Respondent

BLAKE MOSLEY LEFATOLA

Second Respondent

CLEO BODIBE-LUSHABA

Third Respondent

In re:

JABU KHUMALO

First Applicant

MALEFU SEMELA

Third Applicant

GLORIA MAKHUBELE

Second Respondent

BLAKE MOSLEY LEFATOLA

Third Respondent

Heard: 26 July 2023

Delivered: 17 October 2023 (This judgment was handed down electronically by circulation to the parties' 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 10h00 on 17 October 2023)

REASONS FOR ORDER

PHEHANE, J

Introduction

- [1] On 26 July 2023, I issued an order discharging a rule nisi that was granted on 10 September 2021. The applicants seek reasons for the order. The reasons follow below.
- [2] The applicants approached this Court seeking an order to revive a contempt of court application.[1] The revival application is unopposed.
- [3] In essence, the applicants seek to revive the rule nisi that was issued on 10 September 2021 in contempt of court proceedings, in terms of which the first, second and third respondents (Gauteng Department of Economic Development, Gloria Makhubele and Blake Mosley Lefatola respectively) were called upon to show cause on the return date, why they should not be found guilty of contempt of court for failing to reinstate the applicants to their

positions in terms of an arbitration award issued under case number GPBC 241/18 dated 24 of February 2019.[2] The applicants in that application were Jabu Khumalo, Patrick Lesejane and Malefu Semela.

- [4] On 19 November 2021, the rule nisi was extended to 4 March

2022. On 4 March 2022, by agreement between the parties, an order was issued per Mkwibiso AJ (the Mkwibiso AJ order) which reads as follows:

'1. Relating to the Second and Third Applicants, the First Respondent will comply with paragraph 8.2 of the arbitration award, under case number GPBC241/2018 by no later than 01 May 2022;

2. Relating to the First Applicant, the Rule Nisi be discharged as the First Respondent is no longer in the employ of the First Respondent [sic];
 3. The Rule Nisi against the 2nd and 3rd Respondents is discharged;
 4. The First Respondent is to pay the costs of this application on a party and party scale [.]'[3]
- [5] It is apparent from the Mkwibiso AJ order that the rule nisi was discharged as against the first to the third respondents. Paragraph 2 of the Mkwibiso AJ order contains an obvious error and

should read that the first applicant (Mr. Khumalo) is no longer in the employ of the first respondent (Gauteng Department of Economic

Development). It transpires that the parties concluded new terms and that is, that the first respondent would reinstate the second and third applicants (Messrs Semela and Lesejane) in terms of paragraph 8.2 of the arbitration award that was the subject matter of the contempt of court proceedings, by no later than 1 May 2022.

[6] For context, it is pertinent to set out the arbitration award in its full terms. It reads:

'8.1 I find the transfer of the applicants out of the education unit as education practitioners amounts to a demotion as envisaged in section 186(2)(a) of the Labour Relations Act as amended;

8.2 As [a] result the transfer of the applicants from the education unit is hereby set aside and they are reinstated to the positions of Education Practitioners as set out in their performance contracts from 1 November 2017;

8.3 as a result of the unfair demotion, the respondent is ordered to pay the applicants two months compensation which is calculated as follows:

8.3.1 Applicant Jabu Khumalo: (14 960.25 x 2 months = R29 920.50) twenty nine thousand nine hundred and twenty rand and 50 cent[s];

8.3.2 Applicant Patrick Lesejane: (14 960.25 x 2 months = R29 920.50) twenty nine thousand nine hundred and twenty rand and 50 cent[s];

8.3.3 Applicant Malefu [Semela] (R20 290 x 2 months = R40 580.00) forty thousand five hundred and eighty rand;

8.4 The respondent must comply with this order within 15 days after receipt of the award;

8.5 There is no order as to costs.'[4]

[7] It follows therefore, from a reading of the Mkwisibo AJ order, that there arose no obligation on the respondents before the Court in that application to comply with paragraph 8.2 of the arbitration award

insofar as the first applicant was concerned. Had this been agreed, the order would have stated so. It is therefore logical that the rule nisi was discharged as against the first respondent insofar as the first applicant (Mr. Khumalo) was concerned. By agreement between

the parties, the rule nisi was discharged against the second and third respondents.

[8] The applicants before the Court in the present application (the revival application) are Messrs. Semela and Lesejane only. They cite Blake Mosley Lefatola as the second respondent and Cleo Bodibe-Lushaba as the third respondent in this application.

[9] The applicants before this Court (Messrs. Semela and Lesejane) aver that their attorney of record received correspondence from the first respondent to hold a meeting to implement the Mkwibiso AJ order.[5] Messrs Semela and Lesejane met with Ms. Bodibe- Lushaba who, according to them, offered them unsuitable positions that constituted

a demotion and in the circumstances, they refused to accept these positions.[6]

[10] The attorney of record of Messrs Semela and Lesejane dispatched correspondence to the attorney of record of the first respondent and demanded compliance with paragraph 8.2 of the arbitration award. They placed on record that the first respondent was failing to comply with the arbitration award, the Mkwibiso AJ order and the Constitution of the Republic of South Africa, 1996. In addition, that they held instructions to approach this Court on an urgent basis for the appropriate relief and would seek costs.[7]

[11] On 18 May 2022, the Deputy Director General: Corporate Management of the first respondent informed Messrs. Semela and Lesejane, and dispatched letters to them that they were reinstated as per the arbitration award and/or to report for duty on 1 June 2022.[8]

[12] Notwithstanding the afore-going, Messrs Semela and Lesejane state that they were not provided with job descriptions albeit their understanding that they were reinstated on the same salary level in compliance with the arbitration award. They aver that

numerous correspondence to the first respondent that it complies with the arbitration award and Mkwibiso AJ order have come to naught. In the circumstances, Messrs Semela and Lesejane allege non-compliance by the respondents with the arbitration award and the Mkwibiso AJ order. Therefore, they seek an order that the respondents in this present case be found “guilty of contempt as prayed for in the Notice of Motion”.[9]

[13] The difficulty with the approach adopted by the applicants in these proceedings is two-fold:

13.1 firstly, the relief sought in the notice of motion is not to find the respondents in this application guilty of contempt of court – it is to revive the contempt of court application- put differently, it is to revive the rule nisi that was discharged on 4 March 2022;

13.2 secondly, no fresh application for contempt of court has been issued against the respondents, who are in effect, different from the respondents in the previous contempt of court application which has been dismissed owing to the discharge of the rule nisi on 4 March 2022.

- [14] What the applicants complain about in essence, is the respondents' non-compliance with Mkwibiso AJ order. However, no application is launched by the applicant's in terms of item 13.2 of the Practice Manual[10] of this Court to hold the respondents in contempt of the Mkwisibo AJ order. These are different respondents and different applicants on the applicants' own version. In my view, the applicant ought to have launched fresh contempt of court proceedings to hold the respondents in contempt of the Mkwibiso AJ order.
- [15] I enquired from Ms Masondo for the applicants, as to why a fresh contempt of Court application was not launched by the applicants to hold the respondents in contempt of the Mkwibiso AJ order. In response, Ms Masondo submitted that no fresh application was launched as disputes ought to be resolved expeditiously. I am in agreement that disputes ought to be resolved expeditiously. However, on the applicants' own version, in February 2023, when they received not joy for the umpteenth time from the respondents regarding compliance with the Mkwisibo AJ order, they did not approach the Court for the appropriate and urgent relief (as was intimated by the applicants a year prior), but only approached this Court approximately four months later, in June 2023, and unfortunately, in my view, on the wrong premise to revive a rule nisi that had been discharged by agreement between the parties and under different circumstances.
- [16] Ms Masondo referred this Court to VLG Accounting CC and Another v Koloni Consulting Enterprise CC and others[11] (VLG Accounting) and submitted that in terms of this case, this Court may revive a rule nisi in circumstances where the rule nisi has been discharged. In my view, the Court in VLG Accounting, relying on Uniform Rule of Court 27(4), held that a rule nisi may be revived in circumstances where there is no prejudice to the parties concerned and where firstly, the rule was discharged in the absence of the applicant, or secondly, where the application was removed from the roll without the rule nisi having been extended. Neither of these two circumstances apply in the present case.
- [17] The effect of a revival of a rule nisi is that the discharge as against the respondents in the contempt of Court application would be reversed. The prejudice to those respondents is obvious in circumstances where the parties agreed to discharge the rule nisi, agreed on different terms in respect of compliance with the arbitration award and in respect of only two applicants.
- [18] In light of the afore-going, the application to revive the rule nisi did not succeed and the aforementioned order was issued.

M. T. M. Phehane

Judge of the Labour Court of South Africa

Appearances:

For the applicants: N. Masondo of S Mabaso Inc. Attorneys

[1] Notice of motion, prayer 1 on p2.

- [2] See: para 1 of the Court order dated 10 September 2021.
- [3] pp 14 to 15.
- [4] p 53.
- [5] See: founding affidavit at para 14 on pp 9 to 10 and annexure “S2” on p 16.
- [6] See: founding affidavit at para 13, p 10.
- [7] See: paragraphs 8 and 9 of the letter by the applicants’ attorney dated 9 May 2022 on p 18.
- [8] Founding affidavit at paras 15 and 16 on pp 10 to 11.
- [9] Founding affidavit at paras 17 to 24 on pp 11 to 13.
- [10] Effective 2 April 2013.
- [11]
- [2021] JOL 51789 (ECLD).
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