

SOUTH AFRICA / JUDGMENT

Songelwa v Bongithole Security Services and Others (P41/21)

[2022] ZALCPE 13 (29 June 2022)

[2022] ZALCPE 13

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P41/21

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IN

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not

Reportable

CASE

NO: P41/21

In

the matter between:

BONGILE

THOMAS SONGELWA

Applicant

And

BONGITHOLE

SECURITY SERVICES

First

Respondent

THE

DIRECTOR(S) OF BONGITHOLE SECURITY
SERVICES

N.O

Second Respondent

MANDLA

MBAMBO N.O

Third Respondent

Heard:

26 November 2021

Delivered: This judgment was handed down electronically by circulation to the Applicant's and the Respondents' 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] This is an application for an order finding the respondents in contempt of court for their non-compliance with an arbitration award which was certified in terms of section 143 of the Labour Relations Act[1] (the LRA). The application is opposed by the respondents. The applicant brought the contempt of court application ex parte. On 6 August 2021 this court issued a rule nisi requiring the respondents to show cause why should not be guilty of contempt of court.
- [2] The applicant was employed by the first respondent as a security guard. An unfair labour practice dispute relating to suspension arose between the parties. The applicant referred it to the Commission for Conciliation, Mediation and Arbitration (the CCMA). Having arbitrated the dispute, the CCMA issued an award dated 17 September 2020 in which the applicant's suspension was lifted. The applicant was ordered to report for duty within 5 days of the issuing of the award and the first respondent was ordered to pay him the remuneration he lost as a result of his suspension in the amount of R34 400.00. The first respondent failed to comply with the award and the applicant had it certified on 12 November 2020 in terms of section 143 of the LRA for purposes of its enforcement. The applicant approached this court for relief alleging that the respondents had refused to comply with the certified award.
- [3] The test for contempt of court is settled. It requires the applicant to prove the existence of an order of court, its service on the respondents and the respondents' non-compliance with the order. When that has been established the respondents have an evidentiary burden of proving that the non-compliance was not wilful and mala fide[2].
- [4] It is common cause that the certified award exists and that it was served on the respondents. The respondents, however, denied having failed or refused to comply with the certified award. It is common cause that the monetary part of the award, although it does not form part of the application, was complied with by the first respondent. The first respondent submitted that it complied with the award in that the applicant returned to work on 2 November 2022. He worked for 3 days and left alleging that he was treated poorly. The applicant did not dispute the respondents' allegation that he returned to work.

- [5] In light of the concession, the applicant failed to prove the respondents' non-compliance with the certified award. The treatment which allegedly drove the applicant away from work constitutes a different dispute and may not be relied upon in support of his claim of contempt of court.
- [6] The respondents sought a costs order against the applicant on the basis that he was required to disclose all the material facts when seeking the rule nisi on an ex parte basis. His failure to disclose that he returned to work resulted in the issuing of the rule nisi which would not have been granted had he disclosed all the relevant facts.
- [7] The applicant failed to establish that the respondents failed to comply with the certified award. His application cannot succeed. I have considered the argument advanced on behalf of the respondents' for costs. I am, however not convinced that fairness justifies the costs order. Although the conduct which forced the applicant to leave his job could not assist him in the contempt application, it has the effect of diminishing his unreasonableness in bringing this application.
- [8] In the premises, the following order is made:

Order:

1. The rule nisi issued out of this court on 6 August 2021 is discharged.
2. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

[1] Act 66 of 1995 as amended.

[2] Fakie NO v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA).

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Prepared on 12 October 2026 · Esheria