

SOUTH AFRICA / JUDGMENT

Zitha v Commission for Conciliation, Mediation and Arbitration and Others (JR474/14) [2016] ZALCJHB 153 (20 April 2016) [2016] ZALCJHB 153

COURT

Labour Court Johannesburg

BEFORE

Mosime

CASE / FILE NUMBER

JR474/14

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No.: JR 474/14

In the matter between:

ZITHA, ZAKHELE ALEX TUMMY

Applicant

And

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

First Respondent

CORMACK, GLEN N.O.

Second Respondent

NATIONAL INSTITUTE FOR HIGHER EDUCATION

Third Respondent

MINISTER OF HIGHER EDUCATION AND TRAINING

Fourth Respondent

Heard:

18 December 2014

Delivered: 20 April 2016

MOSIME AJ

1. The Applicant appeared before this Court represented by an attorney, Mr Mahomed. The Third and Fourth Respondents were also represented by an attorney, Ms Lancaster. There is a long history on this matter, which was initially launched by the Applicant without any legal assistance. At the hearing of this application, the Applicant's representative noted his appearance as a legal representative of the Applicant and notified the court of his instruction to withdraw the application. The court accordingly ruled that the matter be removed from the roll.
2. Ms Lancaster immediately applied to court for the award of punitive costs against the Applicant, arguing that the matter had protracted and pursued despite numerous advices to the Applicant that his application had no merit. Mr Mahomed opposed the awarding of costs on the basis that the Applicant was a lay person who at all times litigated on his own, and only received legal representation at the latest stage of that litigation. The Applicant was also without means and such an award would amount to unfairness and injustice.
3. I considered the submissions made on this issue and read all the documents including considering the merits of the actions taken by the Applicant in pursuing this matter and came to the following conclusions:
 - 1) It is apparent that the Applicant was aggrieved and genuinely believed that the courses of actions that he followed in all the steps he followed would have yielded the justice and result that he desired. I find that he acted with a bona fide belief and that his actions could not have been actuated by any ulterior motive.
 - 2) The actions he pursued were all based upon this belief, and were consistent with the rights that he is endowed with by the constitution. It would only be fair for this court to consider not imposing a restriction that would constrain lay persons from pursuing justice through its doors by capriciously imposing costs against them simply because of an inconvenience they may have caused. Lay persons must be free – I hasten to add, within reason, to pursue their cases in this court without any fear and this court shall accordingly exercise its mandate to dispense equity-based, fair and reasonable outcomes to all that appear before it. Where it is plain that a litigant knowingly and maliciously pursued actions and dragged others to this court unreasonably, in my view, this court should consider an appropriate cost order.

4. Section 162 of the Labour Relations Act provides that this Court may make an order for the payment of costs taking into account considerations of law and fairness. Having thus considered the matter and further taking into account that the Applicant had withdrawn the Application, I am of the view that considerations of law and fairness dictate that an order of costs as sought by the Third and Fourth Respondents should not be made. Accordingly, I make the following order.

ORDER:

4.1 This matter is removed from the roll.

4.2 No order is made as to costs.

Mosime AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Mr Nadeem mahomed, Attorney

Attorney for the Applicant

For the Applicant: Ms S Lancaster, from Crafford Attorneys

Attorney for the Third and Fourth Respondents

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Prepared on 11 October 2026 · Esheria