

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR252/20

In the matter between:

**NGAKA MODIRI MOLEMA DISTRICT
MUNICIPALITY**

Applicant

and

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING
COUNCIL, NORTH WEST DIVISION**

First Respondent

LINDOKUHLE DLAMINI N.O.

Second Respondent

OLERATO PEARL PHIRI

Third Respondent

Heard: 11 May 2022 and 13 June 2022

Delivered: 22 January 2024 (This judgment was handed down electronically by circulation to 2024.)

REASONS FOR ORDER

PHEHANE, J

- [1] This application served before me on 11 May 2022 and on 13 June 2022. On 11 May 2022, I postponed the application to 13 June 2022 and gave directions as to the filing of pleadings and ordered the third respondent's legal representative to pay the wasted costs of the postponement *de bonis propriis*. On 13 June 2022, I handed down an order *inter alia*, reinstating the review application, granting condonation for its late filing and the late filing of the applicant's notice in terms of rule 7A(8)(b), reviewing and setting aside the

arbitration award and remitting the matter to the first respondent to be heard *de novo*.

- [2] On 25 May 2022, the third respondent sought reasons for the order handed down on 11 May 2022. The brief reasons follow below.
- [3] Things came to a head at the hearing on 11 May 2022, with Mr. Scholtz for the third respondent, arguing on heads of argument submitted by himself on the morning of the hearing, several points to the effect that the review application was not properly before the Court, was defective and had in any event lapsed. (The heads of argument do not bear the Court stamp and I take the view therefore, that they are not properly filed with the Registrar of this Court).
- [4] Adv. Phalane for the applicant submitted that the conduct of the third respondent amounts to an ambush in circumstances where the applicant had sent the set down notice to Scholtz Attorneys on 6 May 2022 enquiring what their attitude would be on the day of the hearing in the absence of filing an answering affidavit in the review application. There was no reply from Scholtz attorneys. This, subsequent to correspondence from this Court on 17 April 2022 enquiring about the answering affidavit. Had Scholtz attorneys responded with their current submissions as early as 6 May 2022, the applicant would have responded to the submissions and would have reconsidered its position as it was of the view that the review application would be heard on an unopposed basis. Adv. Phalane submitted that Scholtz attorneys must pay the wasted costs *de bonis propriis* in light of their conduct in litigating the dispute and serving the third respondent's heads of argument containing their contentions an hour before the Court proceedings began without any regard for the orderly conduct of Court proceedings.
- [5] Mr. Scholtz maintained that the email address to which this Court sent correspondence on 17 April 2022 belonged to an employee who had since left the firm. He did not deny being aware of this email correspondence and the correspondence by the applicant of 6 May 2022. Mr. Scholtz submitted that

even if the third respondent filed its heads of argument containing the issues raised therein 2 days prior, it would not have made any difference as the applicant would not have brought an application to reinstate the review application within 2 days. How Mr. Scholtz was certain of this, remains a mystery. Mr. Scholtz was present in Court and had the opportunity to make representations as to why this Court should not order him to pay the wasted costs *de bonis propriis* and he failed to do so.

- [6] Due to the conduct of Scholtz attorneys having no disregard for the orderly conduct of the Court proceedings and making callous statements without any basis regarding how the applicant would have responded had it been aware before the hearing of the issues as contained in the third respondent's heads of argument, I exercised my discretion to make an order as to the payment of costs *de bonis propriis* against Mr. Scholtz.
- [7] It is apparent that the request for reasons is solely due to the costs order against Mr. Scholtz and had nothing to do with the third respondent. I say this as the third respondent complied with the Court order, in that an answering affidavit was filed in the reinstatement application on 30 May 2022 as per the Court order of 11 May 2022. I point out that in paragraph 2.1 of the third respondent's answering affidavit in the reinstatement application, the deponent mentions that I upheld the third respondent's preliminary point that the review had lapsed and granted an order that the review application had lapsed. This is misleading. Mr. Scholtz was in Court when the order was made and he is well advised to refrain from making misleading statements and to advise his clients properly when affidavits are settled.

M. T. M. Phehane

Judge of the Labour Court of South Africa