

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 763/23

In the matter between:

RUNIS CAMPHER BROKERS

Applicant

And

DANIELLE UREN

Respondent

Heard: 25 January 2024

Delivered: 20 February 2024

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be on 20 February 2024.

JUDGMENT

PRINSLOO, J

Introduction

[1] The Applicant approached this Court for an order to find the First Respondent (Respondent) guilty of contempt of Court. The Respondent opposed the application.

Brief history

- [2] The Applicant employed the Respondent in August 2021 as a call centre manager and the parties signed a contract of employment, which incorporated a clause dealing with confidential information.
- [3] On 25 May 2023, the Respondent resigned and took up employment with the Second Respondent, a financial services provider that provides services similar to the Applicant.
- [4] In July 2023 the Applicant approached this Court on an urgent basis for an order *inter alia* interdicting and restraining the Respondent from disclosing confidential information of the Applicant and using or disclosing such information in order to solicit, canvass and entice any of the Applicant's clients.
- [5] On 27 July 2023, the following Court order was issued:
- '1. The first respondent undertakes not to use the confidential information of the applicant to contact any clients that were clients of the applicant, at date of resignation of the first respondent and for a period of 12 months from date of order;
 2. All disputes and claims between the parties, which either may have against the other is hereby settled in full and final settlement;
 3. Each party to pay his own costs.'
- [6] In September 2023, the Applicant filed a contempt of court application because the Respondent refused to comply with the terms of the Court order to the extent that she contacted Mr Beukes, a client of the Applicant, within the 12-month period.

Contempt of Court

[7] In *Bruckner v Department of Health and others*¹, the Court dealt with the requirements for contempt and it was held that:

‘It is trite that an applicant in a contempt of court application must prove beyond a reasonable doubt that the respondent is in contempt. An applicant must show:

- (a) that the order was granted against the respondent;
- (b) that the respondent was either served with the order or informed of the grant of the order against him and could have no reasonable ground for disbelieving the information; and
- (c) that the respondent is in wilful default and mala fide disobedience of the order.’

[8] In *Anglo American Platinum Ltd and another v Association of Mineworkers and Construction Union and others*², the Court has held that:

‘The principles applicable in an application such as the present are well-established. In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), the Supreme Court of Appeal observed that the civil process for a contempt committal is a ‘peculiar amalgam’ since it is a civil proceeding that invokes a criminal sanction or its threat. A litigant seeking to enforce a court order has an obvious and manifest interest in securing compliance with the terms of that order but contempt proceedings have at their heart the public interest in the enforcement of court orders (see para 8 of the judgment). The court summarized the position as follows at para 42:

“To sum up:

- (a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders,

¹ [2003] ZALC 129; (2003) 24 ILJ 2289 (LC) at para 26.

² (2014) 35 ILJ 2832 (LC) at para 4.

and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

- (b) The respondent in such proceedings is not an "accused person", but is entitled to analogous protections as are appropriate to motion proceedings.
- (c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and *mala fides*) beyond reasonable doubt.
- (d) But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.
- (e) A *declarator* and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.”

[9] In *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited*³ (*Matjhabeng*), the Constitutional Court confirmed the requisites for contempt of court as follows:

‘I now determine whether the following requisites of contempt of court were established in *Matjhabeng*: (a) the existence of the order; (b) the order must be duly served on, or brought to the notice of, the alleged contemnor; (c) there must be non-compliance with the order; and (d) the non-compliance must be wilful and *mala fide*. It needs to be stressed at the outset that, because the relief sought was committal,

³ [2017] ZACC 35; 2018 (1) SA 1 (CC) at para 73.

the criminal standard of proof – beyond reasonable doubt – was applicable.’

- [10] The Applicant has to prove the aforesaid requisites beyond reasonable doubt and I will deal with them in turn.
- [11] Once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden to adduce evidence to rebut the inference that the non-compliance was not wilful and *mala fide*. If the respondent fails to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.⁴
- [12] To establish non-compliance requires more than a failure to comply with the order. In *Matjhabeng*,⁵ the Constitutional Court affirmed that contempt of court does not consist of mere disobedience of a court order, but of “*contumacious disrespect for judicial authority*”⁶. The requirement of wilfulness and *mala fides* means that contempt is committed not by a mere disregard of the court order, but by the demonstration of a deliberate and intentional violation of the court’s dignity, repute or authority.⁷

Analysis

Existence of the order and service

- [13] In *casu*, the existence of the Court order and the Respondent’s knowledge thereof is not in dispute.

Non-compliance with the Court order

- [14] The Applicant’s case is that the Respondent acted in direct contravention of the Court order by using its confidential information to contact a client of the

⁴ *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) at para 42.

⁵ *Matjhabeng* supra at para 65.

⁶ See *Matjhabeng* supra and *Pheko and others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC) at para 42.

⁷ *Dibakoane NO v Van den Bos & Others; Van den Bos and Others v Gugulethu and Others* [2021] ZAGPJHC 652 (17 August 2021) at para 29.5.

Applicant, Bluebird Electrical (Pty) Ltd, represented by its sole director, Mr Beukes, and took the said client's business away from the Applicant.

- [15] The Applicant received a 'broker letter of appointment and mandate' on 1 September 2023, in terms of which Mr Beukes appointed the Second Respondent as his new. Insurance broker. Ms Jansen van Rensburg, from the Applicant's offices, subsequently contacted Mr Beukes to enquire about the reasons as to why he terminated his broker appointment with the Applicant. The Applicant's version is that Mr Beukes said *inter alia* "that the Respondent did not contact him, then said that the Respondent did not really contact him and then asked if she can send someone to assist him with his will..." The Applicant submitted that "based on the aforementioned it is evident that the Respondent contacted Beukes in direct contravention of the Court order".
- [16] The Applicant's case is that the Respondent is therefore soliciting clients from the Applicant. Mr Higgs for the Applicant confirmed during argument that the Applicant's complaint is only in respect of Mr Beukes and that no other clients were solicited. Mr Beukes forms part of the list of the Applicant's clients and his records, such as his contact details, constitute the Applicant's property and confidential information, which the Respondent is specifically prohibited from using. Her contempt is wilful.
- [17] The Respondent denied that she acted in direct contravention of the Court order by using the Applicant's confidential information to contact a client and to take his business away from the Applicant.
- [18] The Respondent's version is that Mr Beukes is a close house friend and has been friends with her husband for over a decade. Mr Beukes has always deemed himself a client of the Respondent and not the Applicant and the only reason why he supported the Applicant was because the Respondent was employed by the Applicant. Mr Beukes' information did not form part of the Applicant's confidential information and she did not contact Mr Beukes regarding his short-term insurance.
- [19] The Respondent explained that Mr Beukes noticed that his premiums with the Applicant were fluctuating and he phoned her and asked her to get him a

better quotation. She advised him that *“I do not work for the applicant and that he must contact the applicant’s office directly. Mr Beukes insisted that as we are friends and I was always the person looking after his insurance, he did not want to work with the applicant but wanted to work with me”*.

[20] Mr Beukes deposed to an affidavit wherein he confirmed that he knew the Respondent and her husband for many years. He stated that the Respondent did not contact him regarding his short-term insurance but that he contacted her in respect thereof because his insurance premiums kept fluctuating monthly. He confirmed that he is not interested in being a client of the Applicant and the only reason why he appointed the Applicant as his broker, was because the Respondent was employed there.

[21] The Applicant attached a transcript of the conversation between Ms Jansen van Rensburg and Mr Beukes. It is evident from the transcript that the following transpired during the conversation between Ms Jansen van Rensburg and Mr Beukes, regarding the reason for Mr Beukes terminating the Applicant’s broker appointment:

‘Ms van Rensburg: As ek mag vra, hoekom?

Mr Beukes: Wel, ek’s nog altyd by haar.

Ms van Rensburg: Was u nog altyd by haar? U weet sy het ‘n restraint of trade geteken, sy mag nie eintlik ons kliënte vat nie, menerr.

Mr Beukes: Wel, ek is nog van die begin af net by haar.

Ms van Rensburg: Ekskuus tog?

Mr Beukes: Ek sê ek is eintlik by julle as gevolg van wat ek saam met haar werk.

Ms van Rensburg: Ja maar....

Mr Beukes: Dis eintlik al hoekom ek by julle was, want ek, hoe kan ek sê, ek gebruik haar as my person wat ek mee deel.

Ms van Rensburg: Oraait, maar het sy u gekontak?

Mr Beukes: Sy’t my nie gekontak nie. Ja, nee sy’t my nie rerig gekontak nie, maar sy’t wel gesê kan ek iemand gebruik wat vir my..... sy’t gevra vir my een of ander, wat noem

mens dit, as mens doodgaan, een of ander sort polis. Sy't gevra kan sy iemand stuur vir so polis.

Ms van Rensburg: O, lewensdekking?

Mr Beukes: Nee, nie lewensdekking nie.....

Ms van Rensburg: O, soos 'n begrafnispolis?

Mr Beukes: As jy doodgaan dat jy, waarnatoe jou goed heengaan.

Ms van Rensburg: Testament?

Mr Beukes: Testament ja, so sy't gevra kan sy iemand stuur vir 'n testament na my toe.

Ms van Rensburg: Want jy weet daar was 'n hofsaak wat ons gewen het teen haar. So sy mag nie...

Mr Beukes: Ok, maar ja sy't gepraat dat sy iemand stuur vir die testament na my toe, toe sê ek nee ek sal hom self doen, maar terwyl ek nou met haar praat wil ek net weet hoekom my goeters... toe sê sy nee, sy is nie meer daar nie.

Ms van Rensburg: Ja

Mr Beukes: Ja, so sy't nie vir my gebel om my weg te van julle af nie, nee.

Ms van Rensburg: Ja maar oraait, weet jy wat, dit gaan 'n problem veroorsaak, want jy het nou 'n makelaarsaanstelling....

Mr Beukes: Ok, maar dit maak nie saak nie. Ek wil nie by julle wees anyway nie . Dit maak nie saak nie. Ek wil alleenlik met haar werk, ek wil nie met julle werk nie, sorry.

Ms van Rensburg: Doodreg, als in die haak. Baie dankie.'

[22] It is evident from the transcript that it does not support the Applicant's version. Mr Beukes clearly confirmed that the Respondent did not contact him, that she did not speak to him about insurance and that he became a client of the Applicant because he followed the Respondent there. He did not want to work with the Applicant and he chose to remain the Respondent's client.

[23] For the Applicant *in casu* to succeed with its contempt of Court application, it has to show, beyond reasonable doubt, that the Respondent is in wilful and

mala fide disobedience of the Court order of 27 July 2023, in that she used the Applicant's confidential information to contact Mr Beukes.

[24] Based on the facts placed before this Court, the Applicant failed to prove beyond reasonable doubt that the Respondent is in wilful default and *mala fide* disobedience of a Court order. I say so for two reasons. Firstly, it is undisputed that Mr Beukes was a client of the Respondent long before she was employed by the Applicant, he followed the Respondent after she was employed by the Respondent and as such, his contact details were known to the Respondent. The contact details of Mr Beukes were not known to the Respondent because she used the Applicant's confidential information to obtain it.

[25] Secondly, there is no evidence placed before this Court to find, beyond reasonable doubt, that the Respondent contacted Mr Beukes. The Respondent's version, that she did not contact Mr Beukes, is supported by the transcript of the conversation between Ms Jansen van Rensburg and Mr Beukes, as well as the affidavit he deposed to in this application. There is no Court order which prohibits Mr Beukes from contacting the Respondent and there is no provision in the Court order for a scenario where a client contacted the Respondent. In the absence of a Court order which sets out anything in that regard, there is no contempt in Mr Beukes contacting the Respondent.

[26] It is evident from Mr Beukes' version, that he regarded himself as a client of the Respondent when he told Ms Jansen van Rensburg that "*ek's nog altyd by haar*" and he had no desire to remain a client of the Applicant after the Respondent left its employ. It was certainly not the fact that the Respondent 'contacted him and solicited his business', as alleged by the Applicant, which caused the Applicant to lose Mr Beukes as a client.

[27] The Respondent did not use the Applicant's confidential information and she did not contact Mr Beukes in breach of a Court order. The threshold is high – beyond reasonable doubt and the Applicant is unable to make out a case to satisfy the threshold and the test for contempt.

[28] As a result, this application has to fail.

Costs

- [29] Insofar as costs are concerned, this Court has a broad discretion in terms of section 162 of the Labour Relations Act⁸ to make orders for costs according to the requirements of the law and fairness.
- [30] Mr Higgs for the Applicant argued that there should be no cost order in respect of the enrolment of 2 November 2023, as it was not due to the conduct of any of the parties and they should not be burdened with a cost order in that regard. Mr Higgs submitted that if the Respondent is not in contempt of Court, there should be no order as to costs, but if this Court finds in favour of the Applicant, cost should follow the result.
- [31] Mr Nel for the Respondent argued that although the contempt application was to be filed *ex parte* with a return date on which date the Respondent was expected to appeal in Court and present a version, Mr Higgs had served the *ex parte* application and indicated to the Respondent's legal representatives, that a Judge might consider the matter on 19 October 2023, when it was enrolled on an *ex parte* basis. The Respondent's legal representatives appeared in Court on 19 October 2023 because Mr Higgs indicated that a Judge might decide the matter on the papers before him/her and because the Respondent could not run such a risk where her imprisonment was prayed for. The Respondent cannot be held liable for the costs of 23 October 2023.
- [32] Mr Nel further submitted that the Applicant is a commercial entity with a large clientele, as opposed to the Respondent who is a salaried individual who had to incur costs in defending this application.
- [33] In *Zungu v Premier of the Province of KwaZulu-Natal and others*⁹, the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to

⁸ Act 66 of 1995, as amended.

⁹ [2018] ZACC 1; (2018) 39 ILJ 523 (CC) at para 24.

bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.

[34] The generally accepted purpose of awarding costs is to indemnify the successful litigant for the expense he or she has been put through by having been unjustly compelled to initiate or defend litigation.

[35] In *Public Servants Association of SA on behalf of Khan v Tsabadi NO and others*¹⁰, it was emphasized that:

‘...unless there are sound reasons which dictate a different approach, it is fair that the successful party be awarded its costs. The successful party had been compelled to engage in litigation and incur legal costs. An appropriate award of costs is one method of ensuring that much earnest thought and consideration goes into decisions to litigate in the Labour Court, whether as applicant in launching proceedings or as respondent opposing proceedings.’

[36] This is a case where the Court has to strike a balance and in my view, this is a case where it is appropriate to make a cost order. The Applicant has filed an application for the Respondent to be found in contempt of Court and for her to be incarcerated or fined. However, the Applicant failed to make out a case in terms of which the Respondent could be found guilty of contempt.

[37] The Applicant failed to make out a case for the relief it seeks and the Respondent was compelled to brief lawyers to oppose a meritless application. I can see no reason why the Respondent is not entitled to a cost order in this instance. The cost order so granted excludes the Court proceedings of 2 November 2023 but includes the costs of 19 October 2023.

[38] In the premises, I make the following order:

Order

- 1 The application is dismissed;

¹⁰ (2012) 33 ILJ 2117 (LC) at 2119I – J.

- 2 The Applicant is to pay the First Respondent's costs.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr C Higgs from Higgs Attorneys

For the Respondents: Mr C Nel from Barnard & Mans Attorneys