

**THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

Not reportable
CASE NO: J1243/12

In the matter between:

KGADI MARGARET RAKGATLA

Applicant

and

DEPARTMENT OF EDUCATION: LIMPOPO

First Respondent

MEC FOR EDUCATION LIMPOPO

Second Respondent

Date heard: 22 February 2024

Judgment delivered: 26 February 2024. The judgment was emailed to the parties on this date.

Summary: Application to rescind court order and revive writ of execution. Application dismissed with no order as to costs.

JUDGMENT

DANIELS J

Introduction

[1] In this matter, the applicant prays for an order “reviving” a court order issued on 16 April 2013. The applicant is referred to as “the employee”. The Department of Education is referred to as “the Department”. The applicant states that the application is brought in terms of Rule 66(1) of the Uniform Rules of Court read with section 163 of the Labour Relations Act.

Material facts

[2] The Department had employed the applicant for several years, when, during 2003, the Department issued a letter of redeployment to her, which she subsequently agreed to in writing. In the letter, the Department treated the applicant as an “excess employee”.

[3] The applicant alleged that she had earlier been “absorbed” by the Department, and had been coerced into agreeing to the redeployment, which constituted an unfair labour practice. She referred an unfair labour practice dispute to the Education Labour Relations Council (the “ELRC”).

[4] The arbitrator, appointed by the ELRC, issued an arbitration award (the “award”) on or about 24 May 2006, in which he found that the Department had committed an unfair labour practice by redeploying the applicant. The arbitrator ordered the Department to employ the applicant as a First Education Specialist, in accordance with its earlier letter dated 29 December 2000. This letter was not placed before the court.

[5] On 13 November 2009, the Department sent a letter to the applicant informing her that she had been absorbed as Senior Education Specialist at Post Level 3, with effect from 1 December 2000.

[6] The applicant maintained that the Department failed to pay her at Post Level 3, and it failed to make her appointment retrospective to 1 December 2000.

[7] The applicant maintained that the Department had not complied with the award, and she approached the Labour Court to make the award an order of court. On 16 April 2013, the Labour Court made the award an order of court.

[8] Pursuant to the order, a writ was issued by the applicant dated 17 December 2014.

[9] In May 2015, the respondents applied for an order setting aside a writ of execution issued by the applicant. These papers were not placed before the court.

[10] During 2017, the writ of execution was set aside by this Court¹ in the absence of the applicant or her attorney, who was seriously ill. The respondents maintained that it had complied with the award by engaging the applicant on Post Level 3 in the position of Senior Education Specialist. Effectively, the current application is brought to rescind the order of this court in which it set aside the writ of execution.

[11] The court papers revealed that the applicant had also brought a contempt application, which was dismissed. These court papers were also not before the court.

Analysis of the case

[12] Rule 66 of the Uniform Rules of Court relate to the duration of writs of execution. The Rule provides that writs remain in force and may be executed without being renewed until the judgment is fully satisfied. Section 163 of the LRA provides that orders of the Labour Court may be executed as if they are decisions, judgments, or orders of the Labour Court.

[13] Court orders, do not, of course, need to be revived. Prescription was not applicable either.

[14] I accept that the applicant's reference to revival of a court order was an administrative error. In fact, the applicant sought to rescind an earlier order, and thereby revive the writ of execution - which this court ruled could not be executed.

Material dispute of fact

¹ The order or judgment was not placed before the court.

[15] I note that there is a material dispute of fact on the papers – whether the respondents complied with the order by remunerating the applicant at Post Level 3 from December 2000. In addition, I note that the applicant seeks a final order.

[16] It is trite that in motion proceedings, where final relief is sought, in the absence of a request to refer the dispute to oral evidence, the court will only grant such relief if: *“the facts stated by the respondent together with the facts alleged by the applicant that are admitted by the respondent, justify such an order unless the court is satisfied that the respondent’s version consists of bald uncreditworthy denials, raises fictitious disputes of fact, is so far fetched or so clearly untenable or so palpably implausible as to warrant its rejection merely on the papers.”*²

[17] In its answering affidavit, the respondent explains:

17.1 There are three factors which impact on salary namely: (1) post level, (2) notch level (the minimum notch to maximum notch = salary range), and (3) qualifications (also termed “REVQ”).

17.2 The applicant was graded or positioned at REVQ 13 – 17.

17.3 Using REVQ 13 – 17:

17.3.1 The salary range for post level 2 educators ranged from 8 – 9 (including 9).

17.3.2 The salary range for post level 3 educators ranged from 9 – 10 (including 9).

17.4 Salary range 9 thus straddled post levels 2 and 3. In other words, being in salary range 9 does not mean that an educator is not being remunerated at post level 3.

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (A) at 635C

17.5 The applicant's remuneration was R107 643 per annum, the third notch of salary range 9.

17.6 The applicant has therefore been remunerated as Senior Education Specialist at Post Level 3, with effect from 1 December 2000, in accordance with the award.

[18] In reply, with no explanation or detail whatsoever, the applicant stated that any increases she received were a result of her qualifications and experience, and not compliance with the award. Furthermore, once again, without any explanation, she said she was entitled to be placed at the third notch of salary range 10 from December 2000 (R135 828 per annum). As a result, she alleges that she is entitled to backpay in the amount of R93 120, 58 per annum.

[19] Applying the *Plascon Evans* test to this matter, the applicant cannot succeed. The factual dispute must be resolved on the version of the respondent, unless the respondent's denial is bald or uncreditworthy, it raises a fictitious dispute, the denial is far-fetched, clearly untenable, or palpably implausible. In my view, the denial, far from being far-fetched, is imminently creditworthy. In my view, the denial by the respondent is not only creditworthy, but clearly correct. In fact, the table,³ put up by the applicant itself, which table forms part of the Employment of Educators Act, clearly demonstrates that salary range 9 straddles both post level 2 and post level 3. I find that the respondents have not breached the award.

[20] It is disappointing that the applicant chose to litigate this dispute through the Labour Court, on motion. It was open to the applicant to bring its claim as a dispute regarding the implementation of a collective agreement, or a breach of contract. Arbitration or trial proceedings is the better way to proceed when material disputes of fact are foreseeable.

³ See page 129 of the paginated pleadings bundle.

Costs

[21] Although the applicant brought the application, which was misconceived and without merit, I see no reason to mulct the applicant in costs. Equity demands that the applicant not be punished for pursuing a case she genuinely believed in. No doubt she acted on legal advice. I make no order as to costs.

Conclusion

[22] In conclusion, I find that the respondents have fully complied with the award. In the circumstances, the application is dismissed, with no order as to costs.

R Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms Grace Makoti

Instructed by: Makoti Attorneys

For the Respondent: State Attorney

Instructed by: Department of Education