

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J1609/21

In the matter between:

DARIUS BABUSENG

Applicant

and

**DEPARTMENT OF ECONOMIC DEVELOPMENT
AND TOURISM**

First Respondent

**HOD: DEPARTMENT OF ECONOMIC DEVELOPMENT
AND TOURISM: NORTHERN CAPE**

Second Respondent

**MEC: DEPARTMENT OF ECONOMIC DEVELOPMENT
AND TOURISM: NORTHERN CAPE**

Third Respondent

**HOD: DEPARTMENT OF ECONOMIC DEVELOPMENT
Respondent**

Fourth

Heard: 8 September 2022

Delivered: 8 September 2022

Reasons: 3 April 2024

REASONS FOR ORDER

RAMOLEFE, AJ

Introduction

- [1] On 8 March 2022, I issued an order the crux of which was to direct the first respondent to comply with the terms of the employment contract concluded with the applicant. I made no order as to costs.
- [2] The respondents are back seeking reasons for the aforesaid order. I give them below.

Background

- [3] In order to put my reasons in their proper context, I commence by referring to the founding affidavit. The applicant alleges that he has an employment contract with the first respondent and that the first respondent attempted to repudiate this contract by transferring and placing him, without consultation, in a different position¹, and subsequently alleging that the primary position into which the applicant was contractually appointed no longer exists.
- [4] The applicant also complains that the first respondent attempted, during his movement from one post to the other, to freeze payment of his salary. This matter appears to have been resolved, and not being part of the main issue that served before me, I will not address it.
- [5] In a poorly drafted answering affidavit deposed to by the second respondent, and in answer to the allegation that the first respondent sought to effect a transfer of the applicant, the respondents embarked upon a most unhelpful and long-winded explanation at the centre of which are allegations that the applicant “*signed a contract of employment and was employed to render a service to the Respondents*”; the first and second applicants “*never intended or transfer the Applicant*” and that the applicant was “*placed into a post like all other employees who were placed into a post*”².
- [6] As to what the latter allegation really means, or what the structure referred to is, these are matters I was unable to unravel either from the papers, or the oral submissions. Not even in paragraph 42 of the answering affidavit, where

¹ See supplementary founding affidavit (unpaginated); pages 3-4 at paras 7-12.

² See answering affidavit (unpaginated) at paras 8.1.1, 8.3 and 8.3.1.

reference is made to an “*amended structure*”, is the court told what the new structure is. All that is pleaded is that the “*post of director strategic initiative which the applicant occupied prior to his secondment does no longer exist in the amended structure that is why the position was affected and had to be placed in another position*”³.

- [7] The notion that the position to which the applicant was contractually appointed no longer exists was dispelled in a reply by the applicant who says that the Chief Director, a Ms Wyngaard, informed him that someone else, a Mr Percy Mokubung, currently serves in the position to which the applicant was appointed⁴. What do the respondents say to this, and where does this leave the court?
- [8] The respondents then sought to place reliance on an attendance register in respect of which it is alleged that there was a “*consultation process and all the officials of the department were consulted on*”⁵. The name of the applicant does not appear on this list. Despite this, the respondents pressed on and opposed the relief sought. (Own emphasis)
- [9] In the midst of this conundrum, a letter was sent to the applicant’s attorneys of record by the state attorney, acting on behalf of the respondents, heralding the news that the applicant was “*found guilty of Murder by the Molopo Regional Court in North West*”⁶. The relevance of this is not clear. Needless to say, the applicant denies this allegation.

Conclusion

- [10] In the absence of a properly pleaded explanation for the applicant’s transfer, and setting forth the true facts relating to the applicant’s contractual position, the court was in no position to refuse the order sought by the applicant. Despite the respondents’ limping case, they insist on being given reasons

³ See answering affidavit (unpaginated) at para 42.

⁴ See replying affidavit (unpaginated) at para 43.

⁵ See answering affidavit (unpaginated) at para 8.3.4.

⁶ See annexure “L” to the answering affidavit.

under circumstances where they know full well why the order was made. This constitutes an abuse of a particular right.

[11] The issues raised in this application appear to be issues, rampant in the civil service, indicative of employment generally being treated as if it were a large chess board where the constant shifting and movement of heads is a primary rule and purpose of the game. This is cause for concern. Whatever might be the benefits of this for the civil service, attempting to have the courts validate this game by provincial departments is not only irresponsible, but it demonstrates a failure to appreciate that the limited resources of the Labour Court ought not be used for what are plainly nefarious purposes.

[12] It is for these reasons, as I say in any event made known to the parties when they appeared before me, that the application was granted.

K. D. Ramolefe

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the applicant: F. Sangoni, instructed by Phatshoane Henney Attorneys.

For the respondents: U. Nibe, of State Attorney: Kimberly.