**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: J1689/23

In the matter between:

**LIGEGE NDIFELANI HAROLD** Applicant

and

**LUCY MOYANE *N.O.*** First Respondent
**DEPARTMENT OF EDUCATION** Second Respondent

**Heard**: 18 April 2024
**Delivered**: 2 May 2024 (This judgment was handed down electronically by emailing a copy to the parties. The 2nd May is deemed to be the date of delivery of this judgment).
**Summary:** Ex parte contempt application. Failure to satisfy requirements.

**JUDGMENT**

**DANIELS J**

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Introduction

[1] This is an application to hold the respondent, the Department of Education, in contempt, for its alleged failure to comply with a certified arbitration award dated 10 June 2022 (hereafter "**the first award**").

[2] The matter was enrolled before my brother, Makhura J, on 1 February 2024. The matter was struck from the roll on the basis that the first award was not properly certified, and an uncertified award could not assist the applicant in a contempt application.

[3] The matter came before me on 18 April 2024, as an application to have the matter re-enrolled. The applicant, however, argued the contempt application as well. It was therefore prudent to the contempt application, if the application was reinstated.

[4] Unfortunately, the applicant was unrepresented in these proceedings, and he drafted the pleadings himself. With respect, as is to be expected from any unrepresented litigant, the pleadings were not the model of clarity.

[5] It is necessary to briefly consider the history to this matter. Regrettably, there is a lengthy and tortuous history to the matter.

Material facts

[6] Mr Harold Ligege (hereafter "the educator" or "the applicant") was employed by the Department of Education: Mpumalanga as a Post Level 1 educator.

[7] From 2015, the educator reported for duty at the Department's circuit office until, during early 2021, he was instructed to report for duty at

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Ithole Primary School (hereafter the "School"). For reasons which are not important at this stage, the educator was unhappy with this instruction, and so was the School Governing Body (hereafter "the SGB") of the School.

[8] On 15 July 2021, the Department informed the educator that his services had been terminated, by operation of law, in terms of section 14(1)(a) of the Employment of Educators Act No. 76 of 1998 (hereafter "the Educators Act"). The educator referred a dispute to the Education Labour Relations Council (hereafter "the Council") alleging that he had been dismissed by the Department and his dismissal was unfair.

[9] On 10 June 2022, Commissioner Havenga issued an arbitration award (as previously mentioned, this is the "first award") in which he found that the educator had been dismissed and his dismissal was procedurally and substantively unfair. Commissioner Havenga ordered the Department to reinstate the educator, retrospectively, with effect from 15 July 2021.[1] Commissioner Havenga directed the educator to report for duty at the School on 1 July 2022.

[10] The educator states that he reported for duty at the School on 1 July 2022 but he was turned away by the SGB because they were overstaffed. The Department alleges that educator never reported for duty on 1 July 2022. The educator states that, after the first award:

10.1 The Department "chose to pay my salary retrospectively",

10.2 The Department "decided to terminate my salary in February 2023".

[1] His backpay, under the award, amounted to R293 713, 46. The employee advised the court that the Department had paid him these monies.

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[11] The Department alleged that, by January 2023, and the educator's services had again terminated by operation of law, in terms of section 14(1)(a) of the Educators Act. Once again, the educator alleged that he had been dismissed and his dismissal was unfair.

[12] The educator again referred a dispute to the Council for conciliation and, when that failed, arbitration. The dispute was enrolled for arbitration before Commissioner Boyce over several days during 2023.

[13] On 28 August 2023, the educator requested that the arbitration (which was scheduled for 30 and 31 August 2023) proceed virtually because he could not afford to travel to the Council. The Council rejected his request and advised the educator that the arbitrator had earlier ruled that the hearing must proceed in person.

[14] On 30 August 2023, when the educator failed to arrive for the arbitration, Commissioner Boyce postponed the arbitration to the following day. When the educator failed to arrive on 31 August, Commissioner Boyce dismissed the applicant's case (the "**second award**").

[15] The educator filed an application to rescind the second award.

[16] On 10 October 2023, Commissioner Boyce dismissed the rescission application (the "rescission ruling"). It appears that the educator has not instituted an application to review the rescission ruling. The educator believes that he is entitled to enforce the first award because, in his view, the Department has not complied with the first award.

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Legal issues and analysis

*Application to re-enrol the contempt application*

[17] The application to re-enrol took the form of a letter addressed to the court. This does not comply with the formalities in the Rules. However, considering that the applicant is a lay person, and unrepresented, it is equitable that I condone non-compliance with the Rules.

[18] Once the application was struck from the roll, the applicant acted promptly to have the award properly certified and to have the matter re-enrolled.

[19] The applicant has a reasonable explanation for his default – he is unrepresented, and a layperson with little or no legal knowledge. In the circumstances, good cause has been shown and the contempt application is reinstated. Having reinstated the contempt application, two legal issues arise: (1) has the applicant satisfied the requirements for contempt, and (2) given that the contempt application relies on the respondents' alleged non-compliance with the first award, what is the effect of the second award?

*Requirements for Contempt*

[20] The contempt applicant before the court related to alleged non-compliance with the first award. I must explore the requirements in an application to hold someone in contempt of court.

[21] In *Fakie NO v CCII Systems (Pty) Ltd*[2] (hereafter "*Fakie*") Cameron JA (as he then was) put it as follows:

[2] 2006 (4) SA 326 (SCA)

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> "*It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has, in general terms, received a constitutional 'stamp of approval', since the rule of law - a founding value of the Constitution - 'requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.*" (Own emphasis)

[22] At para 42, Cameron JA (as he then was), succinctly set out the requirements for contempt. An applicant must prove all the requisites of contempt – namely existence of the order; service of the order; non-compliance with the order; wilfulness and mala fides – all of which must be proved beyond reasonable doubt. But, once the applicant has proved existence of the order, service or notice of the order, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides. If the respondent fails to advance evidence that establishes reasonable doubt, as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

[23] In this matter, the applicant, the educator, does not state in what manner the Department failed to comply with the certified award (i.e. the first award).[3] Instead, from the applicant's own papers, it appears that the Department reinstated the educator's salary and made retrospective payment of his salary as required by the certified award. Accordingly, it appears that the Department reinstated the applicant, and he remained employed until his second deemed discharge during January 2023.

[3] For example, it was unclear whether the Department paid interest on the amount of R293 713, 46 (see para 70 of the first award). Section 143(2) states that where an arbitrator orders payment of a sum of money, that amount attracts interest at the rate prescribed in the Prescribed Rate of Interest Act from the date of the award. The award was issued on 10 June 2022. Thus, interest would have accrued from 10 June 2022 until the date of payment.

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[24] It appears that the applicant believes that he has not been reinstated (in accordance with the first award) because the Department did not compel the SGB (of Ithole Primary School) to permit him *physically* to teach there.

[25] In *National Union of Textile Workers and others v Jaguar Shoes*[4] the court explained that, at common law, an employer that is ordered to *reinstate* an employee will be deemed to have complied with the order if it pays the remuneration due to the employee in respect of his normal hours of work. Simply put, an employer is not required to provide work to the employee, but the employer is required to remunerate the employee when the employee has tendered his services (absent extraordinary circumstances).

[26] From the applicant's own version, it appears that the employer paid him his remuneration for the period before the first award, and it paid him his remuneration from 1 July 2022 until the second deemed discharge during January 2023. It therefore *appears* that the applicant was reinstated following the first award.[5]

[27] In the circumstances, the application for contempt must fail. The applicant failed to prove *beyond reasonable doubt* that the Department has not complied with the first award.

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[4] 1987 (1) SA 39 (N) para 44 – 5

[5] Insofar the court's conclusion in paras 23 and 26 is incorrect (and the applicant has not been paid the full amount of money due to him under the first award plus interest) the applicant ought to seek legal advice as to whether he may issue a writ of execution to recover such monies or institute legal proceedings to recover such monies in the civil courts, or the Labour Court in terms of section 77(3) of the Basic Conditions of Employment Act No. 75 of 1997. See also fn. 3 above.

*Effect of the second award on the contempt application*

[28] For whatever reason, the applicant chose not to institute review proceedings to review and set aside the second award, which was issued on 10 October 2023.

[29] Regrettably, the applicant can no longer seek reinstatement through the operation of the first award. If, after January 2023, the applicant desired reinstatement he was obliged to challenge the second award.

[30] The issue of the second award (dismissing the applicant's unfair dismissal claim) is an administrative act. If the second award has not been reviewed and set aside, it is presumed to be lawful and it has legal consequences.[6] In the circumstances, there is presently no arbitration award finding that the deemed discharge of the applicant on or about 7 January 2023 constituted a dismissal and that such dismissal was substantively unfair.

Conclusion

[31] In the result, the application to reinstate the matter is granted. The application to hold the respondents in contempt of court is dismissed.

**RN Daniels**

**Judge of the Labour Court of South Africa**

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[6] *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 (6) SA 222 (SCA) at paras 26 – 29