



**REPUBLIC OF SOUTH AFRICA**  
**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**  
**JUDGMENT**

Reportable

Case no: J 2151/13

**In the matter between -**

**VEREENIGING ABATTOIR (PTY) LTD**

**Applicant**

**And**

**FOOD AND ALLIED WORKERS UNION**

**First Respondent**

**MAWENG AND 14 OTHERS**

**Second to Further Respondents**

**Heard: 22 May 2014**

**Delivered: 11 June 2014**

**Summary: Contempt proceedings. Individuals not cited in application to interdict unlawful strike. Individual cannot be guilty of contempt of Court order were he/she was not party to proceedings given rise to the order. Individuals could be guilty of contempt if cited in a representative capacity.**

---

**JUDGMENT**

---

MOLAHLEHI, J

Introduction

- [1] The applicant has instituted contempt proceedings against the respondents. The proceedings are opposed. The respondents have raised a point *in limine* regarding the attempt by the applicant to hold certain members of the respondents who were not parties in the original interdict application, liable for contempt.
- [2] The interdict against the respondents was granted by this Court on 26 September 2013. The respondents were jointly and severally interdicted from breaching the strike rules which had been agreed to between the parties. The respondents were also jointly and severally interdicted from engaging in the following conduct in pursuance of their strike action:
- “a) Engage in any strike action/ picketing in any area other than the soccer field as designated by the strike agreement.
  - b) Prevent non- striking employees from reporting for work;
  - c) Obstruct any access entrance or exists of premises of the Applicant;
  - d) Obstruct any access to the roads to the premises of the Applicant
  - e) Assault, intimidate and /or threaten to assault any member the public, non-striking employees or replacement employees of the Applicant.
  - f) Damaging property belonging to the Applicant or any member of the public.
  - g) Carrying or displaying any weapon, including but not limited to sticks, stones and knobkieries.”
- [3] The applicant states in its papers that the above order was read to the first respondent's members on 27 November 2013, including the tenth to the fourteenth respondents. The tenth to fourteenth respondents are: Messrs Benton

Nwendwe, James Potsane, Samual Mofokeng and Petrus Siphelo who are members of the first respondent and are also shop-stewards. The applicant further states that members indicated that they understood the contents of the Court order after it was read to them. In addition to sending the Court order to the first respondent under the cover letter, the order was also attached at the entry and exit gates of the applicant.

- [4] On 24 October 2013, the applicant obtained another Court order from Rabkin-Naiker J calling upon the first respondent in the first contempt of Court application to show cause why they should not be held in contempt of the Court order. The names of the second to further respondents are listed in Annexures "A", "G" and "R" of the contempt application. In the applicant's contempt application the respondents are specified as "Second to Further Respondents" and their names are cited in annexure "G" and "R" attached to the founding affidavit. The individual cited in the annexure to the applicant's papers in the application to interdict are the following: Dudu Mziwonke, James Potsane, Magida Flanisi, Elias Wekaba, Magdalene Auma Maweng, Makedisi Benton Ndwendwe, Mzimkulu Petrus Siphelo, Sibusiso Maxwel Dlamini and Ronald Mabaso.
- [5] The approach to adopt when dealing with the charges of contempt of Court is well established. In order to succeed in an application to have a person committed to prison for contempt of a Court order, the applicant must show that: (a) the order was granted against the respondent cited in the contempt proceedings and (b) that both the Court order and the contempt application have been served on the individual responsible for the implementation/compliance with the court order.<sup>1</sup>
- [6] It follows that a person can only be in contempt of a Court order in which he or she was cited as a party in the application. As a general rule an individual who was not cited before obtaining the Court order cannot be held to be in contempt

---

<sup>1</sup> *Democratic Nursing Organisation of SA & another v Director-General, Department of Health & others* (2009) 30 ILJ 1845 (LC) at page 1848, paragraph [14].

of the order for that reason and more importantly because he or she was not a party to the proceedings that resulted in the Court order. The other reason for not holding an individual who was not a party to the proceedings liable for non-compliance with the Court order is because that individual would not have been afforded an opportunity to oppose the application that gave rise to such an order.

- [7] An individual would however be liable for the non-compliance with the Court order even if he or she was not a party to the proceedings that gave rise to the Court order if in the contempt proceedings such an individual is cited in his or her capacity as a representative of the legal entity against which the order was made, such as a company director or a union official who, with the knowledge of an order of court, caused the entity to disobey the order. In other words an individual who causes a legal entity to disobey a Court order shall be held liable for the contempt of the order even though he or she was not cited in the proceedings that gave rise to the order.
- [8] It is common cause in the present matter that the following persons were not cited in the application for the alleged contempt of the court order; Daniel Mokhlo, Flip Moledi, Lazarous Matli, Francis Nxobo and Phakiso Mhlanga.
- [9] The issue for determination in this matter is whether it is competent to institute contempt proceedings against the individuals mentioned above when they had not been cited in the contempt application.
- [10] It is common cause that the people mentioned above are employees of the applicant. These individuals were not included in the applicant's application for contempt of the Court order for reasons unknown to this Court. It is for this reason that those individuals who were not cited in the contempt application cannot be held liable for the alleged contempt of the court order. The individuals in question were not afforded an opportunity to oppose the contempt application.
- [11] In order to succeed in this application it would seem to me that the appropriate approach which the applicant ought to have followed was that which it adopted in

the case of the sixth respondent, Mr Phetshwane who was also not part of the initial contempt application. In that instance the applicant subsequent to obtaining the initial interdict instituted an interdict against Mr Phetshwane.

[12] In the premises the point *in limine* raised by the respondent's stands to succeed. I see no reason why costs should not in law and fairness follow the results.

Order

1. The point *in limine* raised by the respondent is upheld.
2. The contempt proceedings instituted against Daniel Mokholo, Flip Moledi, Lazarous Matli, Francis Nxobo and Phakiso Mhlana is dismissed.
3. The applicant is to pay the cost of the respondents.

---

E Molahlehi

APPEARANCES:

For the Applicant: Avd B L Roode  
Instructed by: Rossouw and Prinsloo Inc.  
For the Respondent: Adv J G Rautenbach  
Instructed by: Cheadle Thompson and Haysom Inc