



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J558/14

MZANEPE ABRAM NGUBENI

Applicant

and

SGB (PRIMESERV) (PTY) LTD

First Respondent

MERRICK ABEL

Second Respondent

Heard: 20 August 2015

Delivered: 20 August 2015

Summary: Enforcement of settlement agreement

JUDGMENT

MYBURGH, AJ

- [1] This matter involves an attempt by the applicant to enforcement of a CCMA settlement agreement concluded with the first respondent more than two years ago. I have today been forced to join the CEO of the Primeserv Group Ltd as the second respondent in this matter. This judgment explains why.

[2] On the papers before me, the relevant facts and sequence of events are as follows:

- a. The applicant was previously employed by the first respondent.
- b. On 11 June 2013, and following the applicant's dismissal by the first respondent, the parties entered into a formal settlement agreement under the auspices of the CCMA. In terms of this agreement, the first respondent undertook to re-employ the applicant with effect from 1 July 2013, and to pay him R3000 in outstanding salary by no later than 25 June 2013.
- c. On 1 July 2013, and in accordance with the settlement agreement, the applicant reported at the first respondent's premises, but it refused or failed to comply with the settlement agreement.
- d. On 2 October 2014, and in these circumstances, Van Niekerk J made the settlement agreement an order of this court in terms of section 158(1)(c) of the LRA¹ and declared it enforceable ("the order of 2 October 2014").
- e. On 20 January 2015, the applicant served the order of 2 October 2014 on the first respondent by leaving a copy of the order with Deidre Cloete.
- f. On 15 May 2015, in an *ex parte* contempt application, Matyolo AJ granted an order to the effect that the first respondent and Ms Cloete (cited as the second respondent) were to appear before this court on 31 July 2015 to show cause why they should not be found guilty of contempt of this court for failing to comply with the order of 2 October 2014 ("the order of 15 May 2015").

¹ Labour Relations Act 66 of 1995.

- g. In the application that led to this order, the applicant described Ms Cloete as a director of the first respondent. As dealt with below, it transpired later that this is incorrect.
- h. On 19 May 2015, the applicant served a copy of the order of 15 May 2015 on the first respondent and Ms Cloete by leaving a copy with one Khomotso Masena.
- i. On 31 July 2015, there was no appearance before court by either the first respondent or Ms Cloete. I postponed the matter to 4 August 2015, and directed that the applicant be referred to the SASLAW *pro bono* office. This in circumstances where it transpired that the applicant had not effected personal service of the order of 15 May 2015 on Ms Cloete. (In terms of para 14.1.3 of the practice manual, “in applications for committal or some other penalty for contempt of court, personal service of the application must be effected on the respondent”.)
- j. On 4 August 2015, the matter was dealt with by Brian Bleazard, who was on duty at the SASLAW *pro bono* office that day. Upon Mr Bleazard having contacted Ms Cloete telephonically, she stated that she knew nothing about the matter, but that she would get the human resources department to deal with it. Mr Bleazard thereupon received a telephone call from one Ferdie, who apparently undertook to ensure the first respondent’s attendance at court. Shortly before 13h00, and when no one from the first respondent had arrived, Mr Bleazard appeared before me on behalf of the applicant. In circumstances where there existed no proof that the order of 15 May 2015 had been served personally on Ms Cloete, Mr Bleazard moved for a fresh order, and undertook to attend to serving it.
- k. Accordingly, on 4 August 2015, I granted an order, ordering the first respondent and Ms Cloete to appear before this court on 18 August 2015 at 10h00 to show cause why they should not be found guilty of

contempt of this court for failing to comply with the order of 2 October 2014 (“the order of 4 August 2015”).

- l. On 7 August 2015, Mr Bleazard attended to serving the order of 4 August 2015. He attended upon the premises of the first respondent, and found his way to Ms Cloete’s office, where he left a copy of the order on her desk in her presence. This after Ms Cloete had indicated that she did not want to accept receipt of the order, and stated that it had “nothing to do with her”. Mr Bleazard then served a copy of the order on the first respondent by leaving a copy with the receptionist, who was also not willing to sign acknowledgement of receipt of the order.
- m. On 17 August 2015, Mr Bleazard filed an affidavit of service setting out the details addressed above. Mr Bleazard emailed a copy of the affidavit to the first respondent, and has submitted proof that the email was successfully delivered.
- n. On 18 August 2015, Jacqueline Driver (briefed by the SASLAW *pro bono* office) appeared before me on behalf of the applicant. There was, again, no appearance by the first respondent or Ms Cloete. Ms Driver then held a telephonic discussion with Ms Cloete, during the course of which Ms Cloete indicated that she is a personal assistant and not a director of the first respondent, and that the matter had “nothing to do with her”. Ms Cloete referred Ms Driver to Kevin Cowley, who she described as the HR director. Sometime later, Ms Driver spoke to Mr Cowley telephonically. Although having confirmed that he was aware and in receipt of the order of 4 August 2015, Mr Cowley stated that neither he nor any representative of the first respondent intended appearing in court.
- o. I then postponed the matter to 20 August 2015, and asked Ms Driver to provide the court with an affidavit setting out the events of 18 August 2015, which she subsequently did. In circumstances where the

question arose in court on 18 August 2015 whether the order of 4 August 2015 should not be reissued with Mr Cowley replacing Ms Cloete as the second respondent, Ms Driver's affidavit reflects that she undertook some research into Mr Cowley's status as a director. The research revealed that: the first respondent in its current form is not a registered entity; Mr Cowley was previously a director of Primeserv ABC Recruitment (Pty) Ltd and Primeserv Employee Solutions (Pty) Ltd, both of which entities are in existence; Merrick Abel is the CEO and an active director of Primeserv ABC Recruitment and Primeserv Employee Solutions; and these companies are part of Primeserv Group Ltd, which is registered on the JSE.

- p. On 20 August 2015, when the matter was called again in court, Ms Driver advised that she had also established that Mr Abel is the CEO of Primeserv Group Ltd.

[3] In all the circumstances described above, this court is left with no option other than to reissue the order of 4 August 2015, replacing Ms Cloete with Mr Abel as the second respondent. While the first respondent may no longer exist as a legal entity, there exists the possibility that its business was transferred to some other entity within the Primeserv Group, and accordingly that the legal obligations in terms of the CCMA settle agreement remain alive. No doubt, Mr Abel will be in a position to shed light on this.

[4] In the circumstances, the following order is made:

1. The respondents are ordered to appear before this court on Friday, 28 August 2015 at 10h00 to show cause why they should not be found guilty of contempt of this court for failing to comply with the order of the court dated 2 October 2014;
2. The respondents are ordered to explain their conduct by way of an affidavit to be filed by 16h00 on 27 August 2015;

3. This order must be served by the applicant's representatives by way of personal service.

Myburgh, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES

On behalf of the applicant: J Driver (briefed by the SASLAW *pro bono* office)