



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no JS 394/09

In the matter between:

SATAWU obo L SELAOLE & OTHERS

Applicant

and

RENO CARRIERS (PTY) LTD

First Respondent

PHILLIPUS RUDOLPH KRUGER

Second Respondent

Heard: 17 February 2017

Judgment: 22 February 2017

JUDGMENT

VAN NIEKERK J

[1] On 1 October 2015 Lallie J granted an order in terms of which the first

respondent was found to have unfairly dismissed the individual applicants. She ordered their reinstatement with retrospective effect. The second respondent, on his own version, is aware of the order and has failed to comply with it.

- [2] The applicants seek to hold the second respondent in contempt of court.

- [3] The principles applicable to civil contempt are well-established. The purpose of contempt proceedings is to compel compliance with orders of court and to vindicate the court's dignity and authority consequent on the disregard of its orders. The principles relevant to contempt were set out by Cameron J in *Fakie NO v CCI Systems (Pty) Ltd* 2006 (4) SA 326 (SCA). It is a crime unlawfully and intentionally to disobey a court order, the essence of which lies in violating the dignity, repute or authority of the court. The order in question must be one *ad factum praestandum*, the order must have been served on the respondent or the respondent must have been advised of the order in circumstances where there are no reasonable grounds for disbelieving the information, and respondent must have failed to comply with the order. The failure to comply must be both *mala fide* and wilful (see *Fakie NO (supra)*, *Uncedo Taxi Service Association v Maninjwa & others* [1998] BCLR 683 (E)).

- [4] As I have indicated, it is not disputed that the order was served on the second respondent; he is aware of the order and its contents. The second respondent opposes these proceedings on the basis that his failure to comply with the order is not *mala fide*. The second respondent states that the first respondent was registered in 2000 for the sole purpose of tendering for a transport contract at the Greenside mine. The tender was successful and the employees were engaged. The contract was cancelled in 2008 consequent on an unprotected strike by the individual applicants, when the first respondent was placed on terms by the client and after the first respondent had attempted to sub-contract. The first respondent was converted into a close corporation in 2010, and all of the liabilities to creditors (which were transferred to the close corporation) were settled. The

auditors have confirmed that the close corporation has not traded since February 2012, when the last liabilities to creditors were settled. In essence, the defence is one of impossibility – there is no business into which the individual applicants can be reinstated.

- [5] Much of the replying affidavit comprises a series of bare denials; the primary contention by the applicants appears to be that the first respondent remains in operation and that the order is executable.
- [6] In so far as there is a factual dispute about whether the first respondent remains in operation, that dispute, in accordance with the rule applicable to factual disputes in motion proceedings, falls to be determined on the first respondent's version. The version that the first respondent has ceased trading and is dormant, as I have indicated, is sustained by the auditor's certificate attached to the answering affidavit and which records that Reno Carriers CC has not traded since February 2012, exactly five years ago.
- [7] In my view, in the absence of an operating business into which the individual applicants might be reinstated, the second respondent has discharged the evidential burden in relation to the requirement of wilfulness – in the absence of a business into which the individual applicants might be reinstated, I accept that there is a reasonable doubt that the non-compliance with the order was wilful and *mala fide*.
- [8] The applicants state that they further seek an order 'directing and confirming' the amount payable by virtue of the retrospective nature of the order. To the extent that the applicants appear to have filed the present application for the purpose of securing the monetary value of that component of the order that makes their reinstatement retrospective, it should be recalled that contempt proceedings are available to a party who has obtained a court order requiring an opponent to do or not do something (*ad factum praestandum*). The enforcement of claims

sounding in money are subject to different mechanisms.

I make the following order:

1. The application is dismissed.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT

REPRESENTATION

For the applicant: Union official

For the respondents: Adv. J Oschman, instructed by Van Heerden Brummer Inc.