



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1675/16

In the matter between:

FIKILE ANNAH NGOBENI

Applicant

and

S P XULU

First Respondent

**DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT, LAND AND ENVIRONMENTAL
AFFAIRS, MPUMALANGA**

Second Respondent

**MEMBER OF THE EXECUTIVE COUNCIL,
DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT, LAND AND ENVIRONMENTAL
AFFAIRS, MPUMALANGA**

Third Respondent

Heard: 04 August 2016

Delivered: 04 August 2016

Reasons: 03 March 2017

REASONS FOR JUDGMENT

TLHOTLHALEMAJE J

[1] This matter came before the Court on an urgent basis on 4 August 2016. An order in the absence of the respondents was issued in the following terms:

- “1. The Non-compliance with the provisions in the Rules of this in relation to form, time limits and manner of service is condoned and the matter is dealt with as one of urgency in terms of Rule 8.
2. The further suspension of the Applicant by the Respondents is unlawful and invalid.
3. The Respondents are interdicted from denying the Applicant access to her workplace.
4. The First Respondent, in his personal capacity, is ordered to pay the costs of this application on a scale as between attorney and own client.”

[2] The respondents have since requested reasons for the order, with specific reference to the cost order against the first respondent (Ms Xulu). The above order was issued against the following background as can be gleaned from the applicant's unopposed papers.

[3] The applicant is a Director, Financial Accounting in the second respondent (the Department). Ms Xulu, is employed as the Head of the Department. On 08 April 2016, the applicant was served with a letter advising her that she was placed on precautionary suspension with effect from that date. Ordinarily, this suspension would have been for a period of sixty calendar days.

[4] Following her suspension, the applicant approached this Court on 28 July 2016 under case number J1565/2016, and Gush J set aside that suspension. On 29 July 2016, the applicant reported for duty, and was yet

again served with a fresh letter of suspension issued by the Ms Xulu. Despite “*Extremely Urgent*” correspondence from the applicant’s attorneys of record to Ms Xulu advising her that the subsequent suspension was unlawful and that it bordered on contempt of a court order, and further that the applicant again intended to approach this Court on an urgent basis, she ignored such warnings.

- [5] In her founding affidavit, the applicant had submitted that Ms Xulu had no legal authority to extend her suspension beyond the prescribed 60 days in accordance with chapter 7, clause 2.7.2 of the SMS Handbook.
- [6] It is trite that this Court may make an order of costs, upon a consideration of the requirements of law and fairness.¹ As already pointed out, the urgent application despite it being properly served on the respondents was unopposed. In terms of prayer 5 of her Notice of Motion, the applicant specifically sought a cost order against Ms Xulu, *de bonis propriis*.
- [7] Despite clear warnings that the suspension of the applicant subsequent to Gush J’s order of 28 July 2016 was unlawful and invalid, and despite further warnings that the applicant would approach the Court, Ms Xulu appeared not to have been shaken in her resolve to keep the applicant suspended. It is apparent that Ms Xulu completely ignored this Court’s order, which is something that cannot be countenanced from public officials.

¹ See section 162 of the Labour Relations Act 66 of 1995 which provides:

- “(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.
- (2) When deciding whether or not to order the payment of costs, the Labour Court may take into account—
 - (a) whether the matter referred to the Court ought to have been referred to arbitration in terms of this Act and, if so, the extra costs incurred in referring the matter to the Court; and
 - (b) the conduct of the parties—
 - (i) in proceeding with or defending the matter before the Court; and
 - (ii) during the proceedings before the Court.
- (3) The Labour Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the Court.”

- [8] Six days had passed before the applicant could approach the Court on an urgent basis in circumstances where there was no justification for Ms Xulu's conduct. In my view, Ms Xulu, in the light of the warnings she had ignored, the clear prayer in the applicant's Notice of Motion, and the time afforded to her to reflect on her conduct, deserves censure from this Court by way of a punitive cost order. There was no need for the applicant to approach the Court on an urgent basis in view of the order previously granted in terms of which her suspension was set aside.
- [9] The applicant therefore based on the considerations of law and fairness cannot be expected to be burdened with any legal costs in these circumstances. The department, the MEC and ordinary tax payer can equally not be expected to be burdened with costs in circumstances where Ms Xulu, ought to have foreseen the consequences of her actions. Those costs should be borne by her. It was in the light of all of these considerations that the order of cost was made on 4 August 2016.

E Tlhotlhemaje

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant:	Adv. Digolamaje
Instructed by:	Leketi Attorneys

For the Respondents:	No appearance
Instructed by:	No appearance

LABOUR COURT