



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no: J 1687/16

In the matter between:

JULY EZEKIEL MOKOENA

Applicant

and

AMERICAN PRODUCTS SERVICES CC

Respondent

Heard: 13 December 2016

Judgment: 13 December 2016

Edited: 29 March 2017

EX-TEMPORE JUDGMENT

VAN NIEKERK J

- [1] This is an application brought by the applicant, who is assisted by his union, to hold the respondents in contempt of court. The requirements for 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.
- [2] The principles relevant to civil contempt were set out in some detail by Judge Cameron in *Fakie NO v CC11 Systems (Pty) Ltd*, 2006 (4) SA 326 (SCA). In terms of those principles it is:
- “A crime unlawfully and intentionally to disobey a court order, the essence of which lies in violating the dignity repute and 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 and circumstances where there are no reasonable grounds for disbelieving the information, and the respondent must have failed to comply with the order. The failure to comply must also be both *mala fide* and wilful.
- [3] In the present instance the order in question is one made by this court when it made a settlement agreement an order of this court. The settlement agreement was one signed between the parties on 18 April 2016. That settlement was concluded following an unfair dismissal dispute between the parties. The settlement agreement is inelegantly drafted, to say the least.
- [4] Paragraph 1 of the settlement agreement is headed “Reinstatement”. That paragraph has been deleted with the addition of the words “See 6”, presumably a reference to paragraph 6 of the *pro forma* used to complete the agreement. Paragraph 2, referring to “Re-employment” has been deleted. Paragraph 4 refers to a monetary settlement and makes mention of a sum of R9 859.41 payable by

no later than: "When the applicant resumes duty." Paragraphs 4 and 5 have been deleted. Paragraph 6, which is headed "Other", reads as follows: "The applicant will go and get his eyes comprehensively tested and show proof of the results that state he is fit to drive heavy duty vehicles. The test must be done within five (5) weeks of today."

- [5] There is a further handwritten addition, which reads: "This to be done by a reputable optometrist." The agreement does not specifically provide that the applicant will be reinstated, nor it does not specifically establish that the eye test, or more accurately an eye test that establishes that the applicant's vision complies with the requirements of the applicant's legislation is a condition to his reinstatement, Frankly, the wording of the agreement is ambiguous and fails clearly to set out whatever either party intended by reaching the settlement that they did.
- [6] What is not in dispute is that the sum of R9 000 odd was paid. The respondent appears to suggest in the answering affidavit that this was paid as a gratuity insofar as the agreement required the respondents to reinstate the applicant subject to him obtaining proof that his eyesight met the necessary thresholds or requirements established by the applicable regulations. Again, as I have mentioned, that is not unequivocally stated in the agreement, but for present purposes I will assume that that is certainly how the respondent understood the terms of the agreement.
- [7] The respondent's case is that shortly after signature of the agreement, in fact, during the course of the next month, an eye test was arranged under the auspices of what is referred to as "Prime Care Wellness Occupational Health Clinic." The results obtained from that test disclosed that the applicant's eyesight is such that he was not fit to drive a heavy duty vehicle. The respondent has made reference to regulation 102 of the regulations promulgated by the Department of Transport. In terms of that regulation, (and this is not disputed) in

the case of an application for a learner's or driving licence relating to Code C1, C, EC1 or E C, the driver must necessarily have, according to the Snellen rating, a minimum visual acuity with or without refractive correction of 6\9 (20\30) for each eye and a minimum visual field of 70 degrees temporal in respect of each eye, with or without refractive correction."

- [8] The results of the tests that were conducted during the course of May 2016 clearly indicate that, as I have said, the applicant failed to meet this threshold. There is a result of "20/100" reflected on the report of the eye test. In these circumstances, and in accordance with the respondent's understanding of the terms of the agreement, a condition they had attached to the settlement agreement had not been fulfilled and it was under no obligation to reinstate the applicant.
- [9] It is not for this court to decide whether the applicant is fit to drive, it is not even for this court to decide whether the eye test that was conducted during the course of May 2016 was valid, nor is this court to decide on the consequences of that test, having regard to the applicable regulations. What this court must determine, as I have indicated, is whether there is an order, whether the respondents have knowledge of the order, whether the respondents have failed to comply with the order and whether that failure is both *mala fide* and wilful.
- [10] It is not in dispute, as I have indicated, that there is an order and that the respondent has knowledge of the order. Even if I were to accept that there was a failure to comply with the order, which, for the reasons I have indicated, I do not accept, but for the sake of argument it seems to me that it cannot be said on the facts before me that any failure to comply is both *mala fide* and wilful.
- [11] The respondent acted according to its understanding of the meaning of the settlement agreement. It arranged for the eye test to be conducted and the results of the eye test, which were conducted by an independent party are such

that in its view the condition that had been established had not been met and that it therefore was under no obligation to reinstate the applicant. In my view, on the information available to me, I cannot find that any refusal to reinstate the applicant was either wilful or *mala fide*. It follows that the respondent is not in contempt of the order of this court and that the application falls to be dismissed.

- [12] With regards to costs, this court has a broad discretion in terms of section 162 to make orders for costs according to the requirements of the law and fairness. The filing of this application and its prosecution before this court in my view is misguided. I will accept that the real issue here and the cause of these proceedings ultimately is the poor wording of the settlement agreement, and again, this is not for the first time, this court would call upon presiding Commissioners to ensure that settlement agreements are coherent and that the respective rights and obligations of those who are party to the agreement are clearly spelt out. This did not happen in the present instance, and as I have indicated, that is in my view largely the cause of this litigation. In those circumstances, it would appear to me that the interest of the law and fairness are best served by each party bearing its own costs.

For those reasons then I make the following order:

1. The application is dismissed.
2. There is no order as to costs.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT