



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 890/17

In the matter between:

TASIMA (PTY) LTD

First applicant

And

**ROAD TRAFFIC MANAGEMENT
CORPORATION**

First respondent

DEPARTMENT OF TRANSPORT

Second respondent

DIRECTOR GENERAL:

DEPARTMENT OF TRANSPORT

Third respondent

MINISTER OF TRANSPORT

Fourth respondent

EMPLOYEES LISTED IN ANNEX "A"

Fifth to 84th respondents

Heard: 23 June 2017

Delivered: 13 July 2017

JUDGMENT

RABKIN-NAICKER J

[1] On the 23 May 2017 Steenkamp J made the following order having heard an urgent application brought by the applicant:

- 1.1 It is declared that, with effect from 5 April 2017, the contracts of employment of the 5th to 84th respondents transferred automatically from the applicant (Tasima (Pty) Ltd) to the first respondent (the Road Traffic Management Corporation) in accordance with the provisions of section 197 of the Labour Relations Act ¹.
- 1.2 The RTMC is directed to pay the 5th to 84th respondents from 5 April 2017 to the date of the final determination of the order in subparagraph 1 above:
 - 1.2.1 on a monthly basis on or before the 25th of each month, the amounts set forth under the column headed "Monthly CTC excl 13th cheque, annual bonus, overtime, standby allowance, birthday voucher and night shift allowance" as set out in Annexure "C" to Annexure "FM 11.6" to the founding affidavit of Fannie Lynen Mahlangu; and
 - 1.2.2 on an annual basis, any additional amounts making up the column headed "Annual Total CTC" as set forth in that schedule.
- 1.3 The confidentiality regime set out in paragraph 107 of the founding affidavit applies.
- 1.4 The RTMC is ordered to pay the costs of this application, including the costs of two counsel, and including the costs of 5 May 2017.

[2] On 2 June 2017 the applicant again approached the Court on an urgent basis after the Steenkamp J Order was not complied with. The first respondent had sought leave to appeal and submitted that its application for leave to appeal suspended the entirety of the Steenkamp J order. The applicant sought a

¹ Act 66 of 1995

declaration of contempt. On this occasion, Saloojee AJ found that the payment obligations operated “notwithstanding any application for leave to appeal or appeals against paragraphs 63.1 and 63.2 of (the Steenkamp Order). On the issue of contempt he stated that:

“[14] The second part of the notice of motion addresses contempt of the order. The evidential burden was placed on the RTMC to establish a reasonable doubt on its wilfulness and *mala fides* in order to avoid an adverse finding.

[15] The RTMC relied on its interpretation of the order and Section 18 of the Superior Courts Act No. 10 of 2013. I am satisfied that the RTMC has discharged the evidentiary burden and finding of contempt of the order is inappropriate in light of the argument on behalf of RTMC.”

[3] The first respondent then gave effect to the May payment through the applicant.

[4] On 6 June 2017, Steenkamp J granted the first respondent leave to appeal his order, save for that part of the order pertaining to the relief in paragraph 63.2. The first respondent then sought leave to appeal the order by Saloojee AJ as well as petitioning the LAC to grant leave to appeal paragraph 63.2 of the Steenkamp J Order.

[5] It is unfortunate that urgent court was seized with yet another urgent application, and counter-application in which submissions were made that will properly be decided by the LAC and on which my brothers Steenkamp J and Saloojee AJ have already pronounced. I have no intention in venturing into the merits of the dispute between the parties that will properly serve before a higher court.

[6] The applicant sought the following urgent relief in its Notice of Motion dated 20 June 2017:

- “2. Directing the first respondent, within 3 hours of the time that this order is handed down, to make payment to the applicant of R3,208,307.91 in respect of the April 2017 salaries as ordered in paragraph 63.2 of the order of Steenkamp J under this case number dated 25 May (“the Order”);
3. Directing the first respondent, by no later than 23:59 on 25 June 2017, to make payment to the fifth to eighty fourth respondents in the amount of ZAR 3,600,599.47;
4. Declaring the first and eighty fifth respondents to be in breach and wilful contempt of paragraph 63.2 of the Order;
5. Ordering that:
 - 5.1 If there is a breach of any part of the orders in paragraph 2 or 3 above, the eighty fifth respondent be committed to imprisonment:
 - 5.1.1 for a period of 30 days;
 - 5.1.2 alternatively until paragraphs 2 and 3 above have been complied with;
 - 5.1.3 further alternatively for such period as the Court deems appropriate;
 - 5.2 should, at any time, there be a breach of paragraph 63.2 of the Order by the first and or eighty fifth respondent, the eighty fifth respondent be committed to imprisonment for a period of 30 days; alternatively until such breach has been rectified; further alternatively for such period as the Court deems appropriate;
 - 5.3 a warrant of committal is to be issued as a matter of extreme urgency by the Registrar of this Honourable Court, on the same papers, duly supplemented as necessary, if either the first or eighty fifth respondents commit any breach/es of any part of the orders in paragraph 2 above, or paragraph 63.2 of the Order.

6. Directing that the first and eighty fifth respondents jointly and severally with any other party that opposes this application, be ordered to pay the costs of this application, on the scale as between attorney and own client including the costs of two counsel.”

[7] First it must be stated that the payment to be made in June in terms of the Steenkamp J order was not yet due when the application was launched and was in fact paid on the day the matter was heard in court, still before due date.

[8] In as far as the April amount is concerned, the following is apparent from the founding papers:

“60. Recognising the calamitous consequences arising from non-payment of the Employees’ salaries, Tasima, on 24 April 2017, addressed the RTMC and informed the RTMC that, recognising no obligation to do so, Tasima would be making payment of the April 2017 salaries to the Employees on the RTMC’s behalf. A copy of the relevant letter (without annexures. A copy of the relevant letter (without annexures) is annexed marked “SA10”.

[9] It is undisputed that applicant made the payment for the April salaries, and has not be reimbursed for this amount. Mr Beaton for the first and eighty-fifth respondents argued that this issue was clearly not urgent. The individual employees had received payment for April salaries and the applicant and first respondent could deal with the claim in different proceedings. I note that the relief for the payment of the April salaries was not specifically addressed in the Notice of Motion before Saloojee AJ dated 26 May 2017.

[10] However an application in contempt proceedings is by its nature urgent as the Practice Manual in this Court recognizes. There had been no breach of the order in respect of the May salaries when the application was brought, as referred to above. Steenkamp J’s Order in respect of first respondent’s obligations was to pay

the salaries, including those for April, to the individual employees. The first respondent has not made any payment in this respect. I declare the first respondent to be in contempt of this part of the Steenkamp J order i.e. the payment of the April salaries.

[11] If there is a breach of the order I shall make in respect of the April monies, the respondents can be in little doubt that the Labour Court will be less than appreciative to deal with this matter again. I have no intention in issuing out contempt orders *in futurum* but trust that the first respondent will not cause any further breaches of the Steenkamp order given that the substantive matters will be dealt with in the LAC.

[12] In as far as costs are concerned, the first respondent must bear the costs of the counter-application. The applicant was not successful in the main application except in respect of the relief sought for the April monies and the application in all other respects was premature. I am of the view that it is equitable that the parties pay their own costs in respect of the main application. I make the following order:

Order

1. The first respondent is to make payment to the applicant of R3,208,307.91 in respect of the April 2017 salaries within 5 days of this order and cause a notice to be filed with the Registrar of the Labour Court that it has done so.
2. The first respondent is to pay the costs of the counter application, including costs of two counsel.

H. Rabkin-Naicker

Appearances:

For the Applicant : JP.V. McNally SC with A.W.T. Rowan

Instructed by : Webber Wentzel

For the First and Eighty Fifth Respondents: R.S Beaton SC with P. Verveen

Instructed by: Selepe Attorneys