



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1130/17

In the matter between:

T LOATE

Applicant

and

HEAD OF DEPARTMENT: FREE STATE

PROVINCIAL GOVERNMENT:

DEPARTMENT OF SPORTS, ARTS, CULTURE &

RECREATION

First

Respondent

THE MEC: FREE STATE PROVINCIAL GOVERNMENT:

DEPARTMENT OF SPORTS, ARTS, CULTURE

& RECREATION

Second Respondent

Heard: 20 June 2017

Delivered: 2 November 2017

JUDGMENT

RABKIN-NAICKER, J:

- [1] This matter was originally set down on the urgent roll on 30 May 2017. The applicant sought a declaration that his suspension was unlawful and unconstitutional, and an order for the immediate lifting of it. An order by agreement removing the matter from the roll on that day with costs to be costs in the application, was made by Saloojee AJ. Three days later, the suspension of the Applicant was lifted. However, there was no tender for costs from the respondent.
- [2] On the same day that the suspension of the applicant was lifted, 2 June 2017, the State Attorney wrote to the applicant's attorney of record as follows:

"Your client's suspension has been uplifted.

The only issue outstanding with regard to your application is that of costs. We believe (my client and I) that we are entitled to costs for the reasons set out in my letter of the 18th May 2017.

These are:

1. Urgency with regard to the intended previous hearing;
2. Lack of jurisdiction;
3. The 60 day question.

I do not intend to repeat what has been stated in previous correspondence to you.

Notwithstanding this my client is prepared to settle the issue by calling it quits, each party bearing its own costs. It is not worth going to Johannesburg, incurring costs thereof and another hearing.

As costs are the only issue outstanding, urgency falls away and costs can be argued in the normal course of events.

I have not had the experience where the courts have allowed costs to be argued on the urgent basis.

If you are not prepared to settle this matter on the basis of each party bearing their own costs, then my instructions are to proceed to ask for costs against your client incurred up to date and any future costs."

- [3] The applicant did not agree to the proposal that each party should pay its own costs. The respondents then proceeded to file opposing papers and an application for condonation, and the applicant then filed his replying affidavit. Heads of argument were also filed by the respondents. The matter remained on the urgent roll and was before me on 20 June 2017.
- [4] A notice of opposition to the application had been filed by the respondents on 17 May 2017. It would have thus been possible for them to simply argue costs on the applicant's papers. The further costs incurred by the State in this matter are in my view entirely within the respondents own making.
- [5] I have no intention of interrogating the merits of the suspension of the applicant in this judgment. Suffice to say that the respondents lifted the precautionary suspension three days after the application was first enrolled at court, and the applicant's papers duly considered. In these circumstances, and given the unnecessary costs incurred by the respondents, I exercise my discretion on the issue of costs and make the following order:

Order:

1. The respondents are to pay the costs of the application.
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H. Rabkin-Naicker

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:

S. Grobler

Instructed by :

Blair Attorneys

For the Respondents:

T. Molokomme

Instructed by:

The State Attorney, Bloemfontein