



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: J3408/17

JR2702/14

In the matter between:

MANKWELE MOLEFE

Applicant

and

KENNETH KAUNDA MUNICIPALITY

First Respondent

MS LS LESUPI

Second Respondent

Application heard: 22 June 2018

Judgment delivered: 26 June 2018

JUDGMENT

VAN NIEKERK J

[1] This is an application to hold the respondents in contempt of court for their alleged failure to comply with an order of this court.

[2] This matter has a sorry history, most of which is recorded in the judgment delivered by this court on 2 May 2018. In short, on 11 December 2014, the SA Local Government Bargaining Council issued an arbitration award reinstating the applicant into the employ of the first respondent. On 22 June 2017, per Salojee AJ, this court dismissed an application to review and set aside that award. On 14 December 2017, Salojee AJ dismissed an application for leave to appeal against his judgment. The applicant filed an application to hold the respondents in contempt. On 9 February 2018, Whitcher J dismissed the application on the basis that the respondents had filed a petition for leave to appeal. The applicant filed a fresh application to hold the respondents in contempt, the application that served before the court on 20 April 2018 and the subject of the judgment delivered on 2 May 2018, the court was faced with two competing submissions. First, the applicant contended that the petition for leave to appeal on which the respondents relied to avoid the contempt application was invalid. He stated under oath that he had visited the court on a number of occasions and that officials here had confirmed to him that no petition had been filed. Of particular concern to him was the absence of an appeal court (or 'JA') case number. The petition on which the respondents relied had been filed under case number JR 2702/2014, the case number allocated to the review application. The respondents on the other hand contended that a valid petition had been lodged, and that pending the outcome of that petition, they could not be said to be in contempt of court by failing to implement the arbitration award. The court made the following order:

1. The application is postponed *sine die*.
2. The court official who is responsible for the administration of appeals to the Labour Appeal Court is directed to file an affidavit, within seven days of this order, as to the status of the document filed by the respondents on 10 January 2018. The affidavit must address, in particular, whether the

document is regarded as a valid petition in terms of the rules of the Labour Appeal Court, with a file for any petition has been opened and record the progress that has been made (if any) in placing the document before the Labour Appeal Court for consideration.

3. After the affidavit has been filed, either party may reenroll the present application for hearing.

4. The costs of the application are reserved.

[3] Mr CT Phopi, who is the registrar of the Labour Appeal Court, deposed to an affidavit on 2 May 2018 in compliance with the above order. He says the following:

4. The Labour Appeal Court which is under my administration has never received a petition under **Kenneth Kuanda Municipality and Mankwele Molofe**. The procedure to be followed when a party petitions the Labour appeal Court is to prepare the petition and approach my office for a case number which will be different from the one at the Labour Court. The petition will then be recorded on the appeared appeals and petition register as having been filed. No petition has been filed as my office on the 10th January 2018 between the above parties.

[4] On the next day, 3 May 2018, the applicant requested that the matter be reenroll which it was for hearing on 22 June 2018.

[5] On 11 June 2018, the respondent's filed an affidavit in reply to that filed by Mr Phophi. The deponent says the following

5. On or about 15 December 2017, the Dr Kenneth Kaunda district municipality launched and served a petition prepared and settled by Adv Dikolomela under the style of case number JR 2702/14. Further, that the said petition was successfully served on both the applicant and the Labour Court on about the 15 December 2017, as annexures '**DRKK-1 and J**' herein will confirm. Further, that the applicant has in all the hearings of this matter on the 9 February 2018 and 20 April 2018, admitted to have been served with the said petition on 15 December

2017. Further, that this Honourable Court is made aware that the *dies non* period, operates from 15 December 2017 to 15 January 2018.

6. On or about 10th of January 2018, the same petition was personally delivered at the Labour Court by the attorneys of record of the first respondent herein. Further that the main file under JR 2702/14 was retrieved by MASHABA, CALVIN and together with the three (3) originals handed to NGCOBO, TSHEPISO in the office of the petition for processing.
7. Further, that at the hearing of this matter on the 20 April 2018, the said NCOBO, TSHEPISO, was available to this Honourable Court, to confirm the receipt of the said petition. Further, that on the 20 April 2018, the said NGCOBO, Tshepiso, accordingly personally allocated an appeal number as JA-42/18, as annexure DRKK-K herein will attest.
8. Further, that there is a valid and standing order of this Honourable Court, and the case number J 3408/2017, as per annexure DRKK-A herein, confirming the existence of a petition. Further, that it is not for PHOPI, CIVILOUS THICHAKWA, to decide whether the petition is submitted is valid or not. Further, that the attorneys of record have never met and/or dealt with PHOPI, CIVILOUS THICHAKWA, on this petition and/or any other enquiries, but only with NGCOBO, TESHEPISO, in the said office...
9. Accordingly, this Honourable Court must accept that there exist a petition as per the order of court as annexure DRKK-A herein and is accordingly allocated JA 42/18, as annexure DRKK-K herein will confirm.

[6] It warrants mention that the annexure DRKK-K relied on by the applicant is the petition bearing the date stamp of the Labour Court dated 10 January 2018, and on the face of which the number 'JA 42/18' has been inserted in handwriting above the case number JR 2702/2014. The explanation proffered by the respondents is not entirely coherent. First, if the petition was indeed delivered on 10 January 2018 and handed to Ngcobo, there is no explanation as to why a 'JA' case number was not immediately allocated then. Further, there is no explanation as to why Ngcobo is said to have 'personally allocated an appeal number as JA 42/18' only on 20 April 2018, which coincidentally, is the date on

which the contempt proceedings had been enrolled. There is no explanation as to why the respondents did not submit at that hearing that a JA case number had indeed been allocated. Finally, it is clear from Phopi's affidavit that he is the person charged with the administration of the Labour Appeal Court. His affidavit records that as at 2 May 2018, there was nothing in the register that indicated that this matter had been allocated a JA case number.

- [7] Be that as it may, I am constrained to accept for present purposes that a case number has been allocated to the petition filed in this matter, and that the petition remains pending. In those circumstances, it is not open to the court to make any finding of contempt.
- [8] There is a further reason why the application cannot, at this point in any event, be entertained. The applicant has an arbitration award in his favour. The challenge to that award, by way of the application for review, has been dismissed. That appears to be the basis on which he seeks to hold the respondents in contempt. There is nothing in the court file that indicates that the award has been made an order of this court. On the contrary, an application in terms of s158(1)(c) was dismissed by Basson J on 13 October 2015, presumably on account of the pending review. The applicant does not assert in his founding papers (nor is there any proof attached those papers) that establishes that the award has been certified in terms of s 143 of the Act. In these circumstances, it would not be open to the court in any event to hold the respondents in contempt of the order, it not having been made an order of this court nor enforceable in terms of s 143 (4).
- [9] For these reasons, the application stands to be dismissed.
- [10] In relation to costs, in my view, the interests of the law and fairness dictate that each party bears its own costs.

I make the following order:

1. The application is dismissed.

André van Niekerk
Judge

REPRESENTATION

For the applicant:

For the respondent: