



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case no: J1443/17

In the matter between:

MANKWELE B MOLEFE

Applicant

and

**DR KENNETH KAUNDA DISTRICT
MUNICIPALITY**

First Respondent

Heard: 5 September 2018

Delivered: 19 September 2018

Summary: (S 158(1) (c)) application inextricably linked to application to archive the same – matters to be heard jointly)

JUDGMENT

LAGRANGE J

Introduction

- [1] This is an opposed application launched on 7 August 2017 to make an award an order of court brought by Mr M B Molefe ('the applicant'). The award, which was issued on 11 December 2014 ordered the applicant's

reinstatement with retrospective effect to the date of his dismissal on 10 July 2014.

Material chronology

- [2] After the notice of set down of the s 158(1) (c) application was issued on 2 July 2018, the respondent brought an application to permanently archive the same file on the basis that the applicant has not prosecuted his claim timeously ('the archiving application'). Strictly speaking, the archiving application was obviously not set down for a hearing on 5 September 2018, because it was only filed after the notice of set down in the enforcement application had been issued. Counsel for the respondent strongly resisted the suggestion that the two applications should be heard jointly, though common sense, the principles governing consolidation of matters and the expeditious conduct of litigation dictates they should be. It is plainly nonsensical to hear an application to make an award an order of court, while another application is pending to archive the very same application.
- [3] The respondent had also requested that the application to archive the s 158 application be enrolled on the unopposed roll as the applicant had supposedly not filed an answering affidavit. However, according to the court file, the archiving application was only filed on 22 August 2018, the same day the letter requesting it to be enrolled was submitted. The applicant filed his opposing affidavit on 24 August 2018, so there appears to be no reason why this ought to be enrolled on the opposed roll.
- [4] Quite apart from launching the archiving application, the respondent also sought to oppose the s 158(1)(c) application on two bases. Firstly, it contended that there is still a pending petition for leave to appeal before the Labour Appeal Court, following the Labour Court refusing leave to appeal against the dismissal of the respondent's review application. Obviously, if the petition is indeed pending, and if leave to appeal were granted any application to make the award an order of court should be stayed pending the outcome of such an appeal.

- [5] However, as things stood when this matter was heard, the court ascertained that on 20 August 2018, the petition had been struck off the roll on account of incomplete documentation being filed. The respondent claimed it was intent on correcting the deficiencies in the petition but, quite extraordinarily, was expecting the Labour Appeal Court to explain to it why its application was deficient. Respondent's counsel strenuously and relentlessly argued that just because the petition had been struck off the roll, that did not mean there was no petition pending before the LAC. However, despite being invited to do so, he could not cite a single authority in support of this contention. It appears the respondent confused a matter being removed from the roll with it being struck off.
- [6] In the course of argument, it was also brought to the court's attention that there was a previous application launched by the applicant to make the award an order of court.
- [7] The first s 158(1)(c) application, under case JR 2702/2014 was dismissed by the Labour Court on 13 October 2015. It is common cause that at that stage, the review application was pending. Clearly, the review application having been dismissed, subject to there being a pending appeal, nothing prevents the applicant from launching a fresh application to enforce the award. The relief sought might be the same, but the factual circumstances before the court are not the same as when a review application was pending.
- [8] The applicant later launched this application to make the award an order of court on 7 August 2017. On 15 September 2017, he also brought an *ex parte* application under case number J 1963/17 against the respondent to hold it, and the responsible executives in contempt of court for not complying with the court order. On 18 October 2017, the respondent launched another application under case number J 2526/27 to set aside a writ of execution issued on 20 September 2017 ('the stay application').
- [9] The stay application was removed from the roll by agreement on 5 December 2017. The contempt application proceeded and on 26 June 2018 was dismissed. The reasons for the contempt application being dismissed were two fold. Firstly, at that stage, the court concluded that a

petition for leave to appeal against the review application was pending. It is important to emphasise this petition was only struck off the roll in August 2018, which was *after* judgment was handed down in the contempt application. The second reason for dismissing the contempt application was that, there was nothing before the court to show that the award had been made and an order of court or of being certified under s 143(4) of the LRA.

- [10] Respondent's counsel also alluded to an attempt by the applicant to enforce the award by obtaining a writ from the magistrate's court. According to the respondent, a writ was issued which is the subject of a pending appeal in the magistrate's court. The facts in that matter, in so far as they might be relevant, are not before the court in this application, nor in the archiving application.
- [11] As matters currently stand, the only pending matters before this court are the s 158(1)(c) application and the related application to dismiss it, though the latter was not set down for hearing on 5 September 2018. At the time of hearing the matter, there was no pending petition for leave to appeal against the dismissal of the respondent's review application following it being struck off the roll.
- [12] In view of what I mentioned earlier, it is quite inappropriate to determine the s 158(1)(c) application separately from the counter-application to order that it be archived and they should be determined jointly. In view of the long and winding path this matter has taken, I am directing that they be enrolled on an expedited basis.
- [13] In order not to delay the matter further, the respondent is also ordered to file any replying affidavit in the archiving application together with a condonation application.

Order

- [1] The s 158(1)(c) application is postponed and must be re-enrolled to be heard jointly with the respondent's application to order the archiving of the application on the opposed motion roll on an expedited basis.

- [2] In the event that the respondent seeks to file any replying affidavit in the application to archive the application, it must file such affidavit within 5 days of receipt of this order, together with a condonation application for the late filing thereof.
- [3] No order is made as to costs.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

In person

RESPONDENT:

P L Dikolomela instructed by
Morathi & Motaka Attorneys

LABOUR COURT